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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 683

THE UNITED STATES OF AMERICA

vs.

ADA L. BURROUGHS AND JAMES CANNON, Jr.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

FILED FEBRUARY 10, 1933

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ADA L. BURROUGHS AND JAMES CANNON, JR.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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1 In Court of Appeals of the District of Columbia

No. 5653

UNITED STATES, APPELLANT

v.

ADA L. BURROUGHS AND JAMES CANNON, JR.

CERTIFICATE

Filed Feb. 9, 1933

Statement of case

The Court of Appeals of the District of Columbia certifies that the record in the above-entitled case discloses the following:

Appellee Ada L. Burroughs, as treasurer of a political committee, known as the headquarters committee anti-Smith Democrats, is charged in the indictment returned October 16, 1931, by a grand jury of the District of Columbia, under the Federal corrupt practices act of February 28, 1925 (U. S. C., title 2, chap. 8), with failure to file with the Clerk of the House of Representatives of the United States written reports of contributions alleged to have been made by one E. C. Jameson for said political committee. Appellee James Cannon, jr., is charged, in each count, with aiding and abetting appellee Burroughs in failing to file such reports. It is charged that the money was contributed for the purpose of influencing and attempting to influence the election of presidential and vice-presidential electors in two States.

The indictment contains ten counts. The 1st, 3rd, 5th, and 7th counts charge the appellees with feloniously failing to file the reports on the different dates specified in the statute.

The 2nd, 4th, 6th, and 8th counts charge the appellees with
2 unlawfully failing to file reports on the respective dates specified in the statute.

The 9th count charges the appellees with conspiring to commit the substantive alleged felonies charged in the preceding 1st, 3rd, 5th, and 7th counts by failing to file the reports on the dates specified, while the 10th count charges a conspiracy to commit the substantive misdemeanors charged in the preceding 2nd, 4th, 6th, and 8th counts by failing to file reports on the dates specified.

The first count of the indictment is as follows:

"The grand jurors for the United States of America, empaneled and sworn in the Supreme Court of the District of Columbia, holding a criminal term at the October term of said court in the year 1931, and inquiring for said District of Columbia, upon their oath present that Ada L. Burroughs, late of the District of Columbia, throughout the period of time extending from July 22, 1928, to and

including March 16, 1929, was the treasurer of a certain political committee which then accepted contributions and made expenditures for the purpose of influencing and attempting to influence the election of presidential and vice-presidential electors in two States, the name of which said committee then was 'headquarters committee anti-Smith Democrats'; that at divers times during said period of time contributions of money were made by one E. C. Jameson, of New York City, New York, for said political committee, as shown by the following table:

$10,000.00	September 18, 1928	$5,000.00	October 16, 1928
$10,000.00	September 28, 1928	$8,000.00	October 19, 1928
$10,000.00	October 9, 1928	$10,000.00	October 19, 1928
$5,000.00	October 16, 1928		

and that it thereafter, and during said period of time, to wit, between the 10th and 15th days next preceding November 6, 1928, the date on which a general election was held at which candidates and presidential and vice-presidential electors were elected in the several States of the United States, became and was the lawful duty of said Ada L. Burroughs, as such treasurer of said political committee, to file with the Clerk of the House of Representatives of
3 the United States a statement, complete as of the day next preceding the date of the filing thereof, if it should be filed, containing the name and address of said E. C. Jameson, the person who made said contributions for said political committee as aforesaid, together with the amount and date of each of said contributions.

"And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Ada L. Burroughs, during said period of time, and while she was such treasurer of said political committee, to wit, at all times between said 10th and 15th days next preceding said November 6, 1928, unlawfully and feloniously did willfully violate a certain provision of chapter 8 of title 2 of the United States Code, to wit, the provision in section 244 of said title requiring her, as treasurer of said political committee, to file with said Clerk of the House of Representatives of the United States, between said 10th and 15th days next preceding said general election, a statement pertaining to the contributions aforesaid and containing the information aforesaid, by them and there unlawfully and feloniously willfully failing to file with said Clerk, to wit, in said District of Columbia, any such statement, or any statement whatever, pertaining to said contribution, containing any such information. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that James Cannon, jr., during said period of time, to wit, between said 10th and 15th days next preceding said general election, at and within said District of Columbia, then and there well knowing all the premises aforesaid, and well knowing said Ada L. Burroughs to be such treasurer of said political committee, and to be required by law, as such treasurer, to file such statement pertaining to said contributions of said E. C. Jameson for said political committee with said clerk, unlawfully and feloniously did willfully aid, abet, counsel,

command, induce, and procure, and advise, incite, and connive at the commission of the above-described offense on the part of said Ada L. Burroughs of willfully violating said provision of said chapter 8 of said title 2 of said United States Code, and so then and there was a principal in the commission of that offense.

"Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided."

The second count of the indictment eliminates the words "and feloniously willfully," charging only that the violations of the Act were unlawfully done; and the remaining counts of the indictment are respectively similar.

4 On November 2, 1931, defendants Burroughs and Cannon, by counsel, filed a demurrer to the indictment and to each and every count thereof, and assigned as grounds of demurrer, first, that the act of Congress entitled the "Federal corrupt practices" act, in section 244 thereof was a violation of section 1 of Article II of the Constitution of the United States and was also in violation of articles 5, 9, 10, and 12 of the amendments of the Constitution of the United States, and in addition assigned as further grounds that the indictment was insufficient to inform the accused of the nature and cause of the accusation against them, and particularly that the indictment failed to contain facts to show that the alleged contributions were ever received by the treasurer (Burroughs) or that the treasurer (Burroughs) ever had any knowledge of any such alleged contributions.

On February 15, 1932, the trial court sustained the demurrer and quashed the indictment, saying in a memorandum opinion that it was unnecessary to pass upon the constitutional question presented by the demurrer and based its decision on the other grounds assigned as follows:

"Among the latter objections [the insufficiency of the indictment] it is contended that no offense has been stated because of the failure to allege as a fact that the Jameson contributions were reported and accounted for to Burroughs, treasurer, or that she had knowledge thereof. It is insisted that such an allegation is necessary because the true meaning and intention of section 244 of the act requires the treasurer of a political committee to report only such contributions as are received directly by him and those received by others which have been duly reported and accounted for to him; and further, at all events the indictment should show that the treasurer had knowledge of indirect contributions before being chargeable with a failure to include them in the statements which he must file under the law.

5 "In my opinion these objections are well taken. A consideration of section 244, in the light of all other related provisions of the act, leads fairly to the conclusion that the legislative intention is to require the treasurer of a political committee to report

only contributions received by him and those duly reported to or accounted for to him. Certainly it was not intended to hold one criminally responsible for failure to report a contribution of which he had no knowledge. This is a proposition advanced by the Government to which I can not assent. It calls for an unreasonable and harsh construction which is neither warranted by the nature of the act, its language, nor its intent. Given such a meaning, a treasurer who had filed a statement honestly and correctly, revealing every contribution known to him, would nevertheless be liable to prosecution because of an inevitable omission of a contribution made for the committee to another of which he had no knowledge. No such unjust purpose can be attributed to this legislation.

"Nor can I accept the alternative contention that those counts which charge a wilful failure by Burroughs to report contributions made for the committee impute to her knowledge of contributions received by another. The term 'wilful,' as used in these counts, is merely an adoption of the word employed in section 252 to differentiate in the penalties between a purposed and intentional violation of the act and one occurring thoughtlessly or accidentally through inadvertence or mistake. The reasoning and authorities in support of these theories are, I think, based upon fundamental misconceptions.

"In my judgment, for the reasons mentioned, all counts of the indictment as drawn fail to allege facts essential to constitute any criminal offense. The demurrer must, therefore, be sustained as to each count. An order will be entered accordingly."

From the judgment sustaining the demurrer and quashing the indictment entered by the lower court February 15, 1932, an appeal to this court was noted on the same day in open court by the United States, and the record on appeal was filed in this court on April 11, 1932, or more than thirty days after the entry of the judgment appealed from.

On this appeal, appellees contend that this court is without jurisdiction to review the action of the lower court on the demurrer because the appeal from the judgment of the lower court was required
to be taken direct to the Supreme Court under the provisions
6 of the criminal appeals act of 1907 (act March 2, 1907, 34 Stat. 1246), and in support of this contention appellees point to the memorandum opinion of the trial judge to sustain their position that the judgment sustaining the demurrer to the indictment was based upon the construction of the statute upon which it was founded. On the contrary, the United States insist the action of the lower court was based upon the insufficiency of the indictment as a pleading.

If the position of either appellant or appellees could be conceded, the duty of this court on the jurisdictional question would be clear (U. S. v. Stevenson, 215 U. S. 190), but as it appears to this court that the court below proceeded upon two grounds in sustaining the

demurrer, on one of which it based its decision on the construction of the statute, i. e., in construing the statute as requiring knowledge of the contribution as a necessary ingredient of the offense, and on the other of which it based its action on the invalidity of the indictment upon general principles of criminal law, i. e., in holding that to charge the offense as wilfully done was not sufficient to charge defendants with knowledge, etc., this court is in doubt whether, in such circumstances, in view of the provisions of the criminal appeals act, an appeal will lie to this court, and, if it will lie, whether this court on such appeal is confined solely to a determination of the correctness of the ruling of the lower court in quashing the indictment on the ground that it was insufficient as a criminal pleading; or, in other words, whether the failure of the United States to appeal
7 directly to the Supreme Court on the construction of the statute is an abandonment of its contention that the construction of the lower court in that respect is wrong, or whether the right to appeal on that subject alone to the Supreme Court takes away from this court jurisdiction to review that question on an appeal otherwise properly taken. And being so in doubt as to its jurisdiction to entertain the appeal, as well as to its jurisdiction in relation to the question last hereinbefore mentioned, this court respectfully certifies the following questions of law arising upon the record, a decision of which is necessary for a proper disposition of the case to the end that a correct result may be reached, and desires the instruction of the Supreme Court of the United States upon said questions, to-wit:

Questions Certified

Question No. 1: Where on a criminal indictment a demurrer is sustained and the indictment quashed on two grounds, one involving a construction of the statute and the other the interpretation of the indictment as a pleading, will an appeal lie at the instance of the United States from the trial court of the District of Columbia to the Court of Appeals of the District of Columbia?

If question No. 1 be answered in the affirmative, then

Question No. 2: May the Court of Appeals of the District of Columbia on such appeal review the ruling of the trial court based on the construction of the statute?

GEORGE E. MARTIN,
Chief Justice.
JOSIAH A. VAN ORSDEL,
Associate Justice.
WILLIAM HITZ,
Associate Justice.
D. LAWRENCE GRONER,
Associate Justice.

Justice Robb, being disqualified, did not sit in this case.

[File endorsement omitted.]

8 [Clerk's certificate to foregoing omitted in printed.]

[Endorsement on cover:] Enter Attorney General. File No. 37380. District of Columbia, Court of Appeals. Term No. 683. The United States of America vs. Ada L. Burroughs and James Cannon, jr. On certificate. Filed February 10, 1933. File No. 37380.

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 683

THE UNITED STATES OF AMERICA

v.

ADA L. BURROUGHS AND JAMES CANNON, JR.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

Neither the memorandum opinion rendered by the Supreme Court of the District of Columbia in sustaining a demurrer to the indictment in this case nor the certificate of the Court of Appeals has been reported.

JURISDICTION

The certificate of the Court of Appeals was filed in this Court on February 10, 1933. Jurisdiction to answer the questions certified is conferred upon this Court by Section 239 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS CERTIFIED

The questions certified (R. 5) are as follows:

> Question No. 1: Where on a criminal indictment a demurrer is sustained and the indictment quashed on two grounds, one involving a construction of the statute [1] and the other the interpretation of the indictment as a pleading, will an appeal lie at the instance of the United States from the trial court of the District of Columbia [2] to the Court of Appeals of the District of Columbia?

If question No. 1 be answered in the affirmative, then

> Question No. 2: May the Court of Appeals of the District of Columbia on such appeal review the ruling of the trial court based on the construction of the statute?

STATUTES INVOLVED

The pertinent statutory provisions are copied in the Appendix, *infra*, pp. 32–40.

STATEMENT

The facts stated in the certificate may be summarized as follows:

The defendants Burroughs and Cannon, hereinafter called the appellees, were indicted in the Su-

[1] The preceding part of the certificate shows (R. 4) that the statute to which reference is made is the statute upon which the indictment was founded.

[2] The court here refers, as its certificate shows (R. 1), to the Supreme Court of the District of Columbia.

preme Court of the District of Columbia under ten counts for violations of the Federal Corrupt Practices Act of February 28, 1925, c. 368, Title III, Secs. 301–318, 43 Stat. 1053, 1070–1074. (U. S. C., Title 2, c. 8, Secs. 241–256.) Appellee Burroughs, as treasurer of a political committee known as the headquarters committee anti-Smith Democrats, was charged with failing to file with the Clerk of the House of Representatives of the United States written reports of contributions alleged to have been made by one Jameson for the aforesaid political committee. Appellee Cannon was charged with aiding and abetting appellee Burroughs in failing to file such reports. The indictment further charged that the money was contributed for the purpose of influencing and attempting to influence the election of presidential and vice presidential electors in two States. (R. 1.) Four of the counts of the indictment charged that the defendants feloniously [3] failed to file the reports on the respective

[3] Each of these counts, as shown by the typical count printed at R. 1–3, charged that as treasurer of the political committee appellee Burroughs "unlawfully and feloniously did willfully" violate the provisions of the Federal Corrupt Practices Act by "unlawfully and feloniously willfully failing to file" with the Clerk of the House of Representatives between certain specified dates a statement of certain contributions made by Jameson for the committee, and that appellee Cannon "unlawfully and feloniously did willfully aid, abet, * * * and connive at the commission of the above-described offense on the part" of appellee Burroughs of "wilfully violating" the provisions of the Federal Corrupt Practices Act, and therefore was a principal in the commission of the offense.

dates specified in the statute, while four other counts charged merely that the defendants unlawfully [4] failed to file the reports in question. The two remaining counts were for conspiracy to commit the substantive offenses charged in the other counts.

The appellees demurred to the indictment upon the grounds (1) that the Federal Corrupt Practices Act was in violation of various provisions of the Constitution, and (2) that the indictment was insufficient to inform them of the nature and cause of the accusation against them, for the reason, particularly, that it failed to contain facts showing that the alleged contributions were ever received by appellee Burroughs, the treasurer of the political committee, or that appellee Burroughs, as such treasurer, ever had any knowledge of any of such alleged contributions. (R. 3.)

The trial court sustained the demurrer and filed a memorandum opinion in which it stated that it deemed it unnecessary to pass upon the constitutional question presented but based its decision on the other grounds assigned. The trial court said (R. 3–4):

> Among the latter objections [the insufficiency of the indictment] it is contended that no offense has been stated because of the

[4] These counts, according to the certificate, omitted the words "and feloniously wilfully" appearing in the counts referred to in footnote 3, charging merely that the violations of the Act were unlawfully done. (R. 3.)

failure to allege as a fact that the Jameson contributions were reported and accounted for to Burroughs, treasurer, or that she had knowledge thereof. It is insisted that such an allegation is necessary because the true meaning and intention of section 244 of the act requires the treasurer of a political committee to report only such contributions as are received directly by him and those received by others which have been duly reported and accounted for to him; and further, at all events the indictment should show that the treasurer had knowledge of indirect contributions before being chargeable with a failure to include them in the statements which he must file under the law.

In my opinion these objections are well taken. A consideration of section 244, in the light of all other related provisions of the act, leads fairly to the conclusion that the legislative intention is to require the treasurer of a political committee to report only contributions received by him and those duly reported to or accounted for to him. Certainly it was not intended to hold one criminally responsible for failure to report a contribution of which he had no knowledge. This is a proposition advanced by the Government to which I can not assent. It calls for an unreasonable and harsh construction which is neither warranted by the nature of the act, its language, nor its intent. Given such a meaning, a treasurer who had filed a statement honestly and correctly, revealing

> every contribution known to him, would nevertheless be liable to prosecution because of an inevitable omission of a contribution made for the committee to another of which he had no knowledge. No such unjust purpose can be attributed to this legislation.
>
> Nor can I accept the alternative contention that those counts which charge a wilful failure by Burroughs to report contributions made for the committee impute to her knowledge of contributions received by another. The term "wilful," as used in these counts, is merely an adoption of the word employed in section 252 to differentiate in the penalties between a purposed and intentional violation of the act and one occurring thoughtlessly or accidentally through inadvertence or mistake. The reasoning and authorities in support of these theories are, I think, based upon fundamental misconceptions.
>
> In my judgment, for the reasons mentioned, all counts of the indictment as drawn fail to allege facts essential to constitute any criminal offense. The demurrer must, therefore, be sustained as to each count. An order will be entered accordingly.

The United States noted an appeal in open court from this judgment on the day that the decision was announced. (R. 4.)

The certificate then proceeds to state the reasons which moved the Court of Appeals to certify the questions of law recited above (*supra*, p. 2), as follows (R. 4–5):

On this appeal, appellees contend that this court is without jurisdiction to review the action of the lower court on the demurrer because the appeal from the judgment of the lower court was required to be taken direct to the Supreme Court under the provisions of the criminal appeals act of 1907 (Act March 2, 1907, 34 Stat. 1246), and in support of this contention appellees point to the memorandum opinion of the trial judge to sustain their position that the judgment sustaining the demurrer to the indictment was based upon the construction of the statute upon which it was founded. On the contrary, the United States insist the action of the lower court was based upon the insufficiency of the indictment as a pleading.

If the position of either appellant or appellees could be conceded, the duty of this court on the jurisdictional question would be clear (*U. S.* v. *Stevenson,* 215 U. S. 190), but as it appears to this court that the court below proceeded upon two grounds in sustaining the demurrer, on one of which it based its decision on the construction of the statute, i. e., in construing the statute as requiring knowledge of the contribution as a necessary ingredient of the offense, and on the other of which it based its action on the invalidity of the indictment upon general principles of criminal law, i. e., in holding that to charge the offense as wilfully done was not sufficient to charge defendants with knowledge, etc., this court is in doubt whether, in such circumstances, in view of

> the provisions of the criminal appeals act, an appeal will lie to this court, and, if it will lie, whether this court on such appeal is confined solely to a determination of the correctness of the ruling of the lower court in quashing the indictment on the ground that it was insufficient as a criminal pleading; or, in other words, whether the failure of the United States to appeal directly to the Supreme Court on the construction of the statute is an abandonment of its contention that the construction of the lower court in that respect is wrong, or whether the right to appeal on that subject alone to the Supreme Court takes away from this court jurisdiction to review that question on an appeal otherwise properly taken.

SUMMARY OF ARGUMENT

The certificate in this case was quite obviously framed upon the assumption that the Criminal Appeals Act is applicable to criminal cases originating in the Supreme Court of the District of Columbia. This assumption was no doubt predicated upon the views of the court below expressed in *United States* v. *Denison,* 47 F. (2d) 433 (60 App. D. C. 71), where it was said (pp. 435–436):

> It is settled beyond question that the Supreme Court of the District of Columbia in a proceeding of this sort exercises the jurisdiction of a District Court of the United States, and as such would come within the provisions of the Criminal Code here in question.

This language had reference to the Criminal Appeals Act and to a proceeding in the Supreme Court of the District of Columbia under the National Prohibition Act, a law generally applicable throughout the United States.

We believe that the Criminal Appeals Act has no application to the Supreme Court of the District of Columbia, or to any other court of first instance within the District of Columbia. This conclusion seems to us unavoidable, because the Criminal Appeals Act does not in terms apply to the Supreme Court of the District of Columbia. Its legislative history quite clearly indicates that it was intended to have no such application. Prior to its enactment the jurisdiction of the Court of Appeals of the District of Columbia to review judgments in criminal cases at the instance of the United States had been fully defined by Congress. Its purpose was to grant the Government a right not theretofore enjoyed, and not to limit the statutory right of appeal to the Court of Appeals of the District which the Government had exercised for some years in criminal cases originating in the courts of the District of Columbia. The Government's statutory right of appeal in such cases has been exercised both before and after the enactment of the Criminal Appeals Act, and there has never been an appeal to this Court from any judgment of the Supreme Court of the District of Columbia under the Criminal Appeals Act since its enactment in 1907.

To conclude that, in extending the Government's right of appeal in cases originating in the District Courts of the United States, Congress by the enactment of the Criminal Appeals Act intended to limit the jurisdiction of the Court of Appeals of the District of Columbia in reviewing judgments in criminal cases, would have practical results which could not have been intended by Congress. Indeed, the contention that the Criminal Appeals Act has application to criminal cases arising in the Supreme Court of the District of Columbia appears to be predicated solely upon the fact that the Supreme Court of the District does exercise the jurisdiction and powers of a District Court in cases arising under Federal statutes having general application throughout the United States. But the exercise of such jurisdiction is no reason for concluding that Congress intended that the Criminal Appeals Act should be applicable in the District of Columbia, where by prior statute the whole process of appeal in criminal cases had been completely provided for.

ARGUMENT

THE CRIMINAL APPEALS ACT HAS NO APPLICATION TO CRIMINAL CASES ORIGINATING IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

The certificate in this case was quite obviously framed upon the assumption by the court below that the Criminal Appeals Act is applicable to

criminal cases within its terms originating in the Supreme Court of the District of Columbia, an assumption which reflects what was said by the same court in *United States* v. *Denison,* 47 F. (2d) 433 (60 App. D. C. 71), where, in holding that it had jurisdiction to review under Section 935 of the D. C. Code (*infra,* p. 36), a judgment sustaining a demurrer to an indictment for insufficiency of allegation, the court said (pp. 435–436):

> It is urged that an interpretation of the statute in question is here involved which can only be reviewed by the Supreme Court of the United States under section 682, title 18, U. S. Code [the Criminal Appeals Act] * * *.
>
> This relates to procedure by writ of error from a District Court of the United States to the Supreme Court. It is settled beyond question that the Supreme Court of the District of Columbia in a proceeding of this sort exercises the jurisdiction of a District Court of the United States, and as such would come within the provisions of the Criminal Code [Criminal Appeals Act] here in question. *Arnstein* v. *United States,* 54 App. D. C. 199, 296 F. 946; *Federal Trade Commission* v. *Klesner,* 274 U. S. 145, 47 S. Ct. 557, 71 L. Ed. 972; *Swift & Co.* v. *States,* 276 U. S. 311, 48 S. Ct. 311, 72 L. Ed. 587.
>
> This right to proceed by error to the Supreme Court, however, only lies where the

> validity or construction of the statute is involved. No such question here arises, since we are dealing solely with the sufficiency of the indictment to charge a crime under the statute. Besides, the validity and construction of this statute has been so often upheld by the courts as to wholly deprive a defendant of the right to proceed on either of the grounds provided. Where the construction of a statute and its validity have been adjudicated, the right to proceed by writ of error from a District Court to the Supreme Court on either of these grounds will no longer be recognized. (Brackets ours.)

There is no other statement of any court which we have been able to find which even suggests that the Criminal Appeals Act has application in cases originating in the Supreme Court, or in any other court, of the District of Columbia. In terms the Criminal Appeals Act (Appendix, pp. 39–40) provides that writs of error [now appeals][5] "may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases" in instances specified by the statute. The statute, therefore, is not in terms applicable to cases arising in the Supreme Court of the District of Columbia.

---

[5] Writs of error were abolished by the Act of January 31, 1928, c. 14, 45 Stat. 54, as amended by the Act of April 26, 1928, c. 440, 45 Stat. 466 (U. S. C. Sup. VI, Title 28, Sec. 861b).

Prior to the passage of this statute, this Court had decided that in the absence of express statutory authority no writ of error might be taken on behalf of the United States in any criminal case (*United States* v. *Sanges,* 144 U. S. 310 (decided April 4, 1892)), and on June 6, 1894, the Court of Appeals of the District of Columbia decided that there was no statutory authority for an appeal by the United States from a decision of the Supreme Court of the District of Columbia sustaining a demurrer to an indictment. *United States* v. *Ainsworth,* 3 App. D. C. 483.

Following the decision in the *Sanges case* efforts were made to secure legislation granting the Government the right to appeal from adverse decisions in criminal cases. As early as December 1, 1892, Attorney General Miller, in his Annual Report to Congress, pointed out the desirability of such legislation and referred to "the established practice in England and most of the States of the Union." (Annual Report, 1892, p. XXIV.) This recommendation was renewed from time to time by succeeding Attorneys General.[6] In the Code of Law for the District of Columbia, approved March 3, 1901 (c. 854, 31 Stat. 1189), six years before the passage of the Criminal Appeals Act, and appli-

[6]Annual Reports of Attorneys General Olney, 1893, p. XXVI; 1894, p. XXIX; Harmon, 1896, p XV; Griggs, 1899, p. 33; 1900, p. 40; Knox, 1901, p. 33; 1903, p. VI; Moody, 1905, p. 10; 1906, p. 4.

cable to all the courts in the District, it was provided in Section 935 (Code, D. C., Title 6, Sec. 355) that—

> In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided,* That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside.

The effect of this and other sections to which we shall refer, was to concentrate in the Court of Appeals of the District of Columbia appellate jurisdiction in all criminal prosecutions begun in the District, whether the appeal was taken by the accused, the Government of the United States, or the District of Columbia.

There are in the District of Columbia three courts having original jurisdiction of crimes and offenses against the laws of the United States, the Supreme Court of the District of Columbia, the Police Court, and the Juvenile Court. The division of jurisdiction between these courts depends not upon whether the law violated is national or local in operation, but upon the sentence which may be imposed or upon the age of the offender. Thus, the Police Court has original jurisdiction concurrent with that of the Supreme Court of the District of many crimes not capital or otherwise infamous and not

punishable by imprisonment in the penitentiary. Section 43 of the D. C. Code (Code, D. C., Title 18, Sec. 152); Section 83 of the D. C. Code (Code, D. C., Title 18, Sec. 81); Section 934 of the D. C. Code (Code, D. C., Title 6, Secs. 353, 401).

If, however, the offender is under the age of seventeen, it is provided in Section 8 of the Act of March 19, 1906, c. 960, 34 Stat. 73, 74 (Code, D. C., Title 18, Sec. 258), that the Juvenile Court of the District of Columbia "shall have original and exclusive jurisdiction of all crimes and offenses * * * hereafter committed against the United States, not capital or otherwise infamous, and not punishable by imprisonment in the penitentiary, committed within the District of Columbia, except libel, conspiracy, and violations of the Post Office and Pension Laws of the United States."

Appeals in criminal cases from the Supreme Court of the District are regulated by Section 226 of the D. C. Code (*infra*, pp. 33–34), and by Section 935 of that Code (*infra*, p. 36) giving the United States the same right of appeals that is given the defendant in a criminal prosecution. Under these sections either party may appeal as of right to the Court of Appeals from any final order or judgment. As originally enacted in the Code of 1901, these sections also permitted review of interlocutory orders by an appeal allowed within the discretion of the Court of Appeals. The Court of Appeals may also within its discretion review the judgments of the

Police Court and the Juvenile Court (Sec. 227, D. C. Code (Code, D. C., Title 18, Sec. 28); Act establishing the Juvenile Court, approved March 19, 1906, c. 960, Sec. 22, 34 Stat. 73, 77 (Code, D. C., Title 18, Sec. 30)).

Thus, before providing for Government appeals in any criminal cases originating in the District and Circuit Courts, Congress set up in the District of Columbia a complete system of appeals in criminal cases arising in all of the courts of the District having jurisdiction of such cases, and granted to the defendant and the Government alike the same right of appeal. The ultimate jurisdiction to review all such cases was vested in the Court of Appeals of the District.

This well-integrated system was in full operation prior to the enactment of the Criminal Appeals Act. There is no suggestion in the legislative history of that Act of any purpose to modify this system. On the contrary, in response to the same demand which induced Congress to provide for Government appeals in criminal cases in the District of Columbia, its purpose in enacting the Criminal Appeals Act was to extend the same reform throughout the United States, with such modifications as might seem desirable.

This being the purpose of the statute, it would be rash to presume that with the reform procedure in the District of Columbia before it, Congress, in re-

ferring to the District Courts, intended to repeal by implication a statute recently enacted authorizing appeals from the Supreme Court of the District of Columbia to the Court of Appeals of the District. The effect of such an implied repeal would be to disrupt the entire system of appeals in the District of Columbia, leaving the Court of Appeals in the position to review decisions of the Police Court and of the Juvenile Court, and the Supreme Court of the United States in the position to review, in a limited number of cases, decisions of the Supreme Court of the District of Columbia, and leaving in doubt the jurisdiction of the Court of Appeals of the District of Columbia in the case of those appeals previously within its jurisdiction and not covered by the provisions of the Criminal Appeals Act.

There is nothing in the legislative history of the Criminal Appeals Act which indicates any purpose to repeal or modify the system of appeals as provided in the Code of Law for the District of Columbia. The bill which subsequently became the Criminal Appeals Act (H. R. 15434) was introduced in the House of Representatives on February 22, 1906 (Cong. Rec., Vol. 40, Pt. 3, p. 2881, 59th Cong., 1st Sess.). As introduced, and as it passed the House, without debate, on April 17, 1906, it read (Cong. Rec., Vol. 40, Pt. 6, p. 5408):

> That in all criminal prosecutions the United States shall have the same right of

> review by writ of error that is given to the defendant, including the right to a bill of exceptions: *Provided*, That if on such writ of error it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside.

With immaterial differences, this bill was practically identical in language with Section 935 of the D. C. Code. The reason for this is explained in the House Report on the bill, as follows (House Report No. 2119, p. 2, 59th Cong., 1st Sess.):

> A number of the States of the Union have by statute provided for the review by an appellate court of legal questions arising in criminal cases. Even when the defendant is acquitted such an appeal is permitted by the State authorities with the proviso that if the defendant has been placed in jeopardy the verdict in his favor shall not be set aside.
>
> Section 935 of the code of the District of Columbia gives to the United States this right of appeal. The accompanying bill will extend this provision of the code of the District of Columbia to all districts in the United States.

The Senate Committee on the Judiciary reported a substitute for the House Bill, which was radically different. (See Cong. Rec., Vol. 41, Pt. 3, pp. 2752, 2757, 59th Cong., 2d Sess.; Harvard Law Review, Vol. 20, p. 219.) This substitute read as

follows (Cong. Rec., Vol. 40, Pt. 9, p. 8695; Senate Report No. 3922, 59th Cong., 1st Sess.):

> That a writ of error may be taken by and on behalf of the United States from the district or circuit courts to the Supreme Court or the circuit court of appeals, as prescribed in an act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and the acts amendatory thereof, in all criminal cases, in the following instances, to wit:
>
> From the decision or judgment quashing or setting aside an indictment;
>
> From the decision or judgment sustaining a demurrer to an indictment or any count thereof;
>
> From the decision arresting a judgment of conviction for insufficiency of the indictment;
>
> From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.
>
> In all these instances the United States shall be entitled to a bill of exceptions as in civil cases.

It will be noted that this substitute, while granting a power of review not as broad as that contemplated by the original bill and its counterpart (Sec. 935 of the D. C. Code), was much broader in scope than the Act as finally passed. Among other things this substitute eliminated the provision of

the original bill which would have permitted the review of rulings on questions occurring during the trial even though the defendant had been acquitted. Although attention was called to the fact that there was a similar provision in Section 935 of the D. C. Code (Cong. Rec., Vol. 41, Pt. 3, p. 2750), and such a provision was incorporated in the bill at one stage of the proceedings (Cong. Rec. Vol. 40, Pt. 9, p. 9032; Vol. 41, Pt. 4, p. 3044), it was not included in the bill when finally enacted. While the substitute bill was the subject of much debate in both Houses, in the end the most radical change therein was the narrowing of the right of review of judgments sustaining demurrers, motions to quash and motions in arrest of judgment to cases where the decision was based upon the construction or invalidity of the statute upon which the indictment was founded and the granting to the Government of a direct appeal to this Court in all cases covered by the Act. We think it clearly evident that Congress did not intend by the Criminal Appeals Act to grant to the United States the same broad right of appeal in criminal cases generally which it had previously granted to the Government in such cases arising in the courts of the District of Columbia.

As late as July 3, 1926, Congress by an Act passed that day (c. 755, 44 Stat. 831; Code, D. C., Title 18, Sec. 27) abolished the right to appeal from interlocutory orders in criminal cases. While the Act

did not specifically mention the Supreme Court of of the District of Columbia, the Committee Reports show that it was aimed primarily at the practice prevailing under Sections 226 and 935 of the D. C. Code pursuant to which the Court of Appeals of the District of Columbia had jurisdiction, in its discretion, to review interlocutory orders of the Supreme Court of the District in criminal as well as civil cases. (Senate Report No. 926, 69th Cong., 1st Sess.; House Report No. 1363, 69th Cong., 1st Sess.) The Senate Report shows that the cases which Congress had in mind were "the cases growing out of the recent oil scandal." These cases arose under statutes of general application throughout the United States, and in no sense involved offenses local to the District of Columbia. Thus, the Act of Congress dealing with this situation is an emphatic legislative recognition that criminal cases arising in the Supreme Court of the District of Columbia under statutes of general application throughout the United States are reviewable in the Court of Appeals of the District under the provisions of the D. C. Code, notwithstanding the enactment of the Criminal Appeals Act, which has application to District and Circuit Courts.

Although the Criminal Appeals Act has been in effect almost twenty-six years, we have failed to find a single case which has been brought from the Supreme Court of the District to this Court under

that Act.[7] During these twenty-six years cases must have arisen in the Supreme Court of the District to which the Act would apply if it has any application to cases in that court, and the absence of any direct appeal to this Court in any such case indicates that no law officer of the Government charged with the authorization of appeals during that period was of the opinion that the Act was applicable in the District. This, moreover, appears also to have been the view of the Court of Appeals of the District until its decision in the *Denison case, supra,* in 1931 (47 F. (2d) 433). Thus, in *United States* v. *Cella,* 37 App. D. C. 423 (decided November 6, 1911), in which this Court denied a writ of certiorari (223 U. S. 728), the Court of Appeals entertained an appeal by the United States under Section 935 of the D. C. Code from a judgment of the Supreme Court of the District sustaining a demurrer to an indictment under Section 5440, R. S., for conspiracy to violate an Act of Congress prohibiting the keeping of bucket shops in the District of Columbia, where the decision was based at least upon the construction, if not the invalidity, of the Bucket Shop Act, which, under the Criminal Appeals Act, would be considered a part of the statute upon which the indictment was founded. *Cf. United States* v. *Katz,* 271 U. S. 354; *United States* v. *Foster,* 233 U. S. 515.

[7] We have had several independent examinations made of records which would undoubtedly have disclosed such cases if they existed.

Further, in *United States* v. *Evans,* 30 App. D. C. 58 (affirmed, 213 U. S. 297), decided only a few months after the passage of the Criminal Appeals Act, the Court of Appeals called attention to that Act, but assumed arguendo and apparently as too obvious to require discussion that Section 935 of the D. C. Code permitted an appeal to it by the United States in at least one of the classes of cases covered by the Criminal Appeals Act; i. e., where the court of first instance sustains a special plea in bar and the defendant has not been put in jeopardy.

We think the error of the court below in the *Denison case* and in its apparent change of view as to the applicability of the Criminal Appeals Act, lies in its reliance upon such cases as the decisions of this Court in *Federal Trade Commission* v. *Klesner,* 274 U. S. 145; *Swift & Co.* v. *United States,* 276 U. S. 311, and its own decision in *Arnstein* v. *United States,* 296 Fed. 946 (54 App. D. C. 199). Cases similar in type are *United States* v. *California Canneries,* 279 U. S. 553, and *Claiborne-Annapolis Ferry Co.* v. *United States,* 285 U. S. 382. In all of these cases it would have been impossible for the courts of the District of Columbia to have exercised jurisdiction under statutes of general application, except by observing statutory provisions in terms applicable to District Courts and Circuit Courts of Appeals of the United States, and if jurisdiction had not been sustained the laws would not have been enforced. In none of the cases cited

was there a local statute covering the specific subject matter to which the general statute referred.

In the case at bar the situation is quite different. Congress having specifically provided a system of appeals from all of the courts in the District of Columbia to the Court of Appeals of the District, it was assumed by the court below that none of these statutory provisions define its jurisdiction because a statute of general application has defined a system of appeals from the District and Circuit Courts to the Supreme Court of the United States. Quite obviously Section 935 of the D. C. Code is specific in its application to all of the courts of the District of Columbia. It provides the exclusive method of appeal by the Government in criminal cases arising in the courts of the District, and is in no sense inconsistent with the Criminal Appeals Act, which has application to cases arising in the District and Circuit Courts.

The Criminal Appeals Act could have no application to cases arising in the Police Court or Juvenile Court of the District. Yet such cases might involve the violation of statutes having general application throughout the United States. Prosecutions in these courts are by information, and not by indictment, and certain of the provisions of the Criminal Appeals Act can have no application to such prosecutions. (D. C. Code, Sec. 44 (Code, D. C., Title 18, Sec. 165); Act of March 19, 1906, c. 960, Sec. 12, 34 Stat. 73, 75 (Code D. C., Title 18,

Sec. 262).) Of course such courts are not District Courts within the meaning of the Criminal Appeals Act.

It is not entirely clear from the certificate how far the court below would extend its assumption that its jurisdiction is governed by the Criminal Appeals Act. Certainly it could not be extended to the Juvenile and Police Courts for the reasons indicated. Question remains as to whether it could be extended to cases originating in the Supreme Court of the District of Columbia under purely local statutes. Doubts are not resolved by calling the court a District Court for one purpose, and a local court for another. A great majority of the criminal cases originating in the Supreme Court of the District of Columbia involve the violation of laws which are purely local in their application. These laws are nevertheless statutes of the United States. As was said by this Court in *Metropolitan Railroad* v. *District of Columbia,* 132 U. S. 1, 9, "Crimes committed in the District are not crimes against the District, but against the United States." See also *Benson* v. *Henkel,* 198 U. S. 1, 14. They consequently fall within the letter of the Criminal Appeals Act, but are obviously not within its spirit. The primary purpose of that Act was, unquestionably, to permit review where the construction and validity of statutes of national importance were involved and not to add to the bur-

dens of this Court by requiring it to consider statutes which are only of local importance.[8]

Comparison of the scope of review granted the United States under the local statute with that granted under the Criminal Appeals Act affords further evidence, we believe, that Congress did not intend that the latter statute should apply in the District of Columbia. As heretofore stated Section 935 of the D. C. Code was passed some six years before the Criminal Appeals Act. It gave the United States the same right of appeal that had been given to a defendant in a criminal case. The right of appeal which the defendant has in a criminal case, so far as appeals from the Supreme Court of the District to the Court of Appeals are concerned, is regulated by Section 226 of the D. C. Code, which, before it was modified by the Act of July 3, 1926, *supra,* provided:

> Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals, and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm,

[8] It is true that there may come within the purview of the Criminal Appeals Act statutes which have local application to places outside of the District of Columbia. See, for example, Chapter Eleven of the Criminal Code (Act of March 4, 1909, c. 321, 35 Stat. 1088, 1142-1145) punishing certain crimes therein specified "when committed within or

> reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

It is evident, therefore, that Section 935 gave the United States a review as of right in the Court of Appeals of any final judgment of the Supreme Court of the District in a criminal case. It also permitted the United States to apply for an appeal to the Court of Appeals from an interlocutory order of that court in such a case. Review was not in any way conditioned upon the nature of the questions presented by the appeal. Reading the statute literally, a review might be had even after a verdict of acquittal and in such case rulings oc-

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on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dock-yard, or other needful building." But obviously crimes of this character constitute but a fragment of the general Federal criminal jurisdiction.

curring during the trial could be reviewed provided that a verdict of acquittal be not set aside. It was provided that the United States should have the right to a bill of exceptions. The right thus conferred was in accordance with the practice in some of the States, its purpose being to secure in effect an advisory opinion for guidance in future cases. (See Senate Report No. 5650, pp. 1–6, 59th Cong., 2d Sess., on H. R. 15434, the bill which subsequently became the Criminal Appeals Act.)

In contrast to these provisions, applicable in the courts of the District of Columbia, the Criminal Appeals Act (*infra*, pp. 39–40), which does not purport either expressly or otherwise to repeal the local statute, conferred upon the Government a very limited and circumscribed right of review. Under that Act the Government may not secure a review of a judgment sustaining a demurrer, motion to quash or motion in arrest of judgment, unless the decision of the trial court is based upon the construction or invalidity of the statute upon which the indictment was founded. No provision was made for the review of interlocutory orders, and the statute expressly provides that a writ of error may not be allowed in any case where there has been a verdict in favor of the defendant.

It is true that by later legislation and by judicial decision the scope of review granted the United States by the local statute as originally enacted has been modified and limited, but it should be noted

that this occurred subsequent to the passage of the Criminal Appeals Act. Thus, by the Act of July 3, 1926, c. 755, 44 Stat. 831, *supra* (Code, D. C., Title 18, Sec. 27) the right of either party to a criminal case to apply for a review by the Court of Appeals of an interlocutory order was prohibited. And in *United States* v. *Evans,* 30 App. D. C. 58, *supra* (affirmed in 213 U. S. 297), which was decided by the Court of Appeals on June 4, 1907, three months after the passage of the Criminal Appeals Act, and which involved an appeal by the United States from the Supreme Court of the District, after verdict of acquittal, to secure a review of exceptions taken during the trial, it was held that the statute should be so read as not to permit a right of appeal in a case of that kind.

To conclude that in extending the Government's right of appeal in cases originating in the District and Circuit Courts of the United States Congress by enactment of the Criminal Appeals Act intended to limit the jurisdiction of the Court of Appeals of the District of Columbia in reviewing judgments in criminal cases would have practical results which could not have been intended by Congress. All criminal cases originating in the Police Court and in the Juvenile Court would still be reviewable in the Court of Appeals of the District under the broad provisions of the D. C. Code. All questions reviewable under the Criminal Appeals Act arising in the Supreme Court of the District would be reviewable in this Court, whereas any questions not

covered by the Criminal Appeals Act would be reviewable in the Court of Appeals of the District.

Such a system would give rise to conflicts of appellate jurisdiction between this Court and the Court of Appeals of the District which could hardly have been within the intent of Congress. Certainly there can be but one appeal from a single judgment. If this Court has jurisdiction by direct appeal to review a judgment of the Supreme Court of the District predicated upon the construction or invalidity of a statute, it would be a strange and cumbersome procedure which authorized a review of the same judgment upon other grounds in another court. And yet this result can not be avoided except by concluding that where the Criminal Appeals Act has any application, there may be no appeal to the Court of Appeals of the District. But this result would be quite as unreasonable, since it would limit review to questions within the provisions of the Criminal Appeals Act if that Act applies, and afford review in the Court of Appeals of the District on other questions if the Criminal Appeals Act does not apply.

If the Criminal Appeals Act has any application to cases arising in the Supreme Court of the District of Columbia, it must exclude the appellate jurisdiction of the Court of Appeals of the District in such cases. But there is nothing in the Criminal Appeals Act to define the cases in which it shall have application and unless it was intended to have application in all criminal cases arising in

the Supreme Court of the District, whether under local statutes or under laws of the United States of general application there is no definition of the cases to which it does apply. To conclude that Congress intended to provide for a direct appeal to this Court in all such cases would be quite unreasonable and we find nothing in the statute, or in its history, upon which to predicate such a conclusion. Indeed, the assumption of the court below seems to be based solely upon the fact that the Supreme Court of the District does exercise the jurisdiction and powers of a District Court in cases arising under Federal statutes having general application throughout the United States. But the exercise of such jurisdiction is no reason for concluding that Congress intended that the Criminal Appeals Act should be applicable in the District of Columbia.

CONCLUSION

We believe that the Court of Appeals has full jurisdiction of the Government's appeal in this case under the provisions of the D. C. Code, to pass not only upon the sufficiency of the indictment but also upon the construction of the statute. Accordingly, we believe that both questions certified should be answered in the affirmative.

Respectfully submitted.

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W. MARVIN SMITH,
Attorney.

MARCH, 1933.

APPENDIX

The pertinent provisions of the D. C. Code are as follows:

> SEC. 43. JURISDICTION.—The said court [Police Court] shall have original jurisdiction concurrently with the supreme court of the District, except where otherwise expressly herein provided, of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violation of the post office and pension laws of the United States; and also of all offenses against municipal ordinances and regulations in force in the District of Columbia. The said court shall also have power to examine and commit or hold to bail, either for trial or further examination, in all cases, whether cognizable therein or in the supreme court of the District. [Code, D. C., Title 18, Sec. 152.]
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> SEC. 44. That prosecutions in the police court shall be on information by the proper prosecuting officer. * * *. [Code, D. C., Title 18, Sec. 165.]
>
> SEC. 61. JURISDICTION.—The said court [Supreme Court of the District of Columbia] shall possess the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States, and shall also have and exercise all the jurisdiction possessed and exercised by the supreme court of the District of Columbia under the Act of Congress approved March

third, eighteen hundred and sixty-three, creating that court, and at the date of the passage of this code. [Code, D. C., Title 18, Sec. 43.]

SEC. 64. The special terms of said court [Supreme Court of the District of Columbia] shall be known, respectively, as the circuit court, the equity court, the criminal court, the probate court, and the district court of the United States. [Code, D. C., Title 18, Sec. 56.]

SEC. 83. THE CRIMINAL COURT.—The trial of crimes and misdemeanors committed in the District of Columbia shall be in the supreme court of the District of Columbia holding a special term as a criminal court, except such misdemeanors as are within the jurisdiction of the police court, as to which said court shall have concurrent jurisdiction with said police court. In all trials in said special term exceptions may be taken by the accused to the rulings of the presiding justice and presented in bills of exceptions in the same manner as in the trial of civil cases. [Code, D. C., Title 18, Sec. 81.]

SEC. 84. THE DISTRICT COURT.—The said district court shall have and exercise the same powers and jurisdiction as the other district courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress, and of all proceedings instituted in exercise of the right of eminent domain. [Code, D. C., Title 18, Sec. 91.]

SEC. 226. JURISDICTION.—Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said

court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeal shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal. [Code, D. C., Title 18, Sec. 26.]

SEC. 227. APPEALS FROM POLICE COURT.—If, upon the trial of any cause in the police court, an exception be taken by or on behalf of the United States, the District of Columbia, or any defendant to any ruling or instruction of the court upon matter of law, the same shall be reduced to writing and stated in a bill of exceptions, with so much of the evidence as may be material to the question or questions raised, which said bill of exceptions shall be settled and signed by the judge within such time as may be prescribed by rules and regulations which shall be made by the Court of Appeals of the District of Columbia for the transaction of business to be brought before it under this section, and for the time and method of the entry of appeals and for giving notice of writs of error thereto from the police court of the District of Columbia; and if, upon

presentation to any justice of the court of appeals of the District of Columbia of a petition which, in the case of a defendant, shall be verified, setting forth the matter or matters so excepted to, such justice shall be of opinion that the same ought to be reviewed, he may allow a writ of error in the cause, which shall issue out of the said court of appeals, addressed to the judge of the police court, who shall forthwith send up the information filed in the cause and a transcript of the record therein, certified under the seal of said court, to said court of appeals for review and such action as the law may require, which record shall be filed in said court of appeals within such time as may be prescribed by the court of appeals, as hereinbefore provided. Any party desiring the benefit of the provisions of this section shall give notice in open court of his or its intention to apply for a writ of error upon such exceptions and thereupon proceedings therein shall be stayed for ten days: *Provided,* That the defendant seeking an appeal shall then and there enter into recognizance, with sufficient surety to be approved by the judge of the police court, conditioned that in the event of a denial of his application for a writ of error he will, within five days next after the expiration of said ten days appear in said police court and abide by and perform its judgment, and that in the event of the granting of such writ of error he will appear in said court of appeals of the District of Columbia and prosecute the writ of error and abide by and perform its judgment in the premises. Upon failure of any defendant to enter into the recognizance provided for in this section the

sentence of the police court shall stand and be executed; otherwise execution shall be stayed pending proceedings upon his application for a writ of error and until final disposition thereof by the said court of appeals. [Code D. C., Title 18, Sec. 28.]

SEC. 934. PLACE OF IMPRISONMENT.—When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the workhouse or in the jail. When any person is sentenced for a term longer than six months and not longer than one year such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision. When the punishment of an offense may be imprisonment for more than one year the prosecution shall be in the supreme court of the District. When the maximum punishment is *a fine only or* imprisonment for one year or less the prosecution may be in the police court. [Code, D. C., Title 6, Secs. 353, 401.]

SEC. 935. APPEALS BY UNITED STATES AND DISTRICT OF COLUMBIA.—In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided,* That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside. [Code, D. C., Title 6, Sec. 355.]

The Act of March 19, 1906, establishing the Juvenile Court (c. 960, 34 Stat. 73, 75, 77) provides:

> SEC. 8. That the juvenile court of the District of Columbia shall have original and exclusive jurisdiction of all crimes and offenses of persons under seventeen years of age hereafter committed against the United States, not capital or otherwise infamous, and not punishable by imprisonment in the penitentiary, committed within the District of Columbia, except libel, conspiracy, and violations of the post office and pension laws of the United States, and also of all offenses of persons under seventeen years of age hereafter committed against the laws, ordinances, and regulations of the District of Columbia, and shall have power to examine and commit or hold to bail all persons under seventeen years of age, either for trial or further examination, in all cases, whether cognizable therein or in the supreme court of the District of Columbia. * * * [Code, D. C., Title 18, Sec. 258.]
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> SEC. 12. That prosecutions in the juvenile court shall be on information by the corporation counsel or his assistant. * * * [Code, D. C., Title 18, Sec. 262.]
>
> SEC. 22. That all appeals from the juvenile court shall be heard and determined in the court of appeals of the District of Columbia. If, upon the trial of any cause in the juvenile court, an exception be taken by or on behalf of the United States, the District of Columbia, or any defendant, to any ruling or instruction of the court upon matter of law, the same shall be reduced to

writing and stated in a bill of exceptions, with so much of the evidence as may be material to the question or questions raised, which said bill of exceptions shall be settled and signed by the judge within such time as may be prescribed by rules and regulations which shall be made by the said court of appeals for the transaction of business to be brought before it under this section, and for the time and method for the entry of appeals and for giving notice of writs of error thereto from the said juvenile court; and if upon presentation to any justice of the said court of appeals of a petition which, in the case of a defendant, shall be verified, setting forth the matter or matters so excepted to, such justice shall be of opinion that the same ought to be reviewed, he may allow a writ of error in the cause, which shall issue out of the said court of appeals addressed to the said juvenile court, which shall forthwith send up the information filed in the cause and a transcript of the record therein, certified under the seal of his said court, to said court of appeals for review and such action as the law may require, which record shall be filed in said court of appeals within such time as may be prescribed by the court of appeals as hereinbefore provided. Any party desiring the benefit of the provisions of this section shall give notice in open court of his, her, or its intention to apply for a writ of error upon such exceptions, and thereupon proceedings therein shall be stayed for ten days: *Provided,* That the defendant seeking an appeal shall there and then enter into recognizance, with sufficient surety, to be approved by the judge of the juvenile court, conditioned that in the event of a

> denial of his application for a writ of error he will, within five days next after the expiration of said ten days, appear in said juvenile court and abide by and perform its judgment, and that in the event of the granting of such writ of error he will appear in said court of appeals and prosecute the writ of error and abide by and perform its judgment in the premises. Upon failure of any defendant to enter into the recognizance provided for in this section the sentence of the juvenile court shall stand and be executed; otherwise execution shall be stayed pending proceedings upon his or her application for a writ of error and until final disposition thereof by the said court of appeals. [Code, D. C., Title 18, Sec. 30.]

The Act of July 3, 1926, c. 755, 44 Stat. 831 (Code, D. C., Title 18, Sec. 27), provides:

> That nothing contained in any Act of Congress shall be construed to empower the Court of Appeals of the District of Columbia to allow an appeal from any interlocutory order entered in any criminal action or proceeding or to entertain any such appeal heretofore or hereafter allowed or taken.

The Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), provides:

> That a writ of error may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the

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No. 683

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

THE UNITED STATES OF AMERICA

v.

ADA L. BURROUGHS AND JAMES CANNON, JR.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR ADA L. BURROUGHS AND JAMES CANNON, JR.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

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THE UNITED STATES OF AMERICA

v.

ADA L. BURROUGHS AND JAMES CANNON, JR.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR ADA L. BURROUGHS AND JAMES CANNON, JR.

JURISDICTION

The case comes here upon questions certified by the Court of Appeals of the District of Columbia, under Sec. 239 of the Judicial Code, with respect to matters of law arising upon an appeal taken by the United States from a judgment of the Supreme Court of the District of Columbia, sustaining a demurrer to an in-

dictment returned in that court against appellees under Sec. 244 of the Federal Corrupt Practices Act of February 28, 1925, c. 368, Title III, Secs. 301-318, 43 Stat. 1053, 1070-1074 (U. S. C., Title 2, c. 8, Secs. 241-256). (Certificate 1.)

QUESTIONS CERTIFIED

The questions certified (C. 5) are as follows:

> Question No. 1: Where on a criminal indictment a demurrer is sustained and the indictment quashed on two grounds, one involving a construction of the statute and the other the interpretation of the indictment as a pleading, will an appeal lie at the instance of the United States from the trial court of the District of Columbia to the Court of Appeals of the District of Columbia?

If question No. 1 be answered in the affirmative, then

> Question No. 2: May the Court of Appeals of the District of Columbia on such appeal review the ruling of the trial court based on the construction of the statute?

STATEMENT OF CASE

The indictment (C. 1-3) and the demurrer thereto (C. 3) involve the construction of the Federal Corrupt Practices Act of February 28, 1925 (U. S. C., Title 2, Chapt. 8) with respect to the responsibility of the treasurer of a political committee to report to the Clerk of the House of Representatives on the several dates specified in the statute *indirect* contributions made *for* the committee (C. 3-4). The Supreme Court of the District of Columbia construed the statute in a written opinion and entered judgment sustaining the demurrer. The Court said (C. 3-4):

"A consideration of section 244, in the light of all other related provisions of the act, leads fairly to the conclusion that the legislative intention is to require the treasurer of a political committee to report only contributions received by him and those duly reported to or accounted for to him. Certainly it was not intended to hold one criminally responsible for failure to report a contribution of which he had no knowledge. This is a proposition advanced by the government to which I cannot assent. It calls for an unreasonable and harsh construction which is neither warranted by the nature of the act, its language, nor its intent. (C. 4) • • •

"Nor can I accept the alternative contention that those counts which charge a wilful failure by Burroughs to report contributions made *for* the committee impute to her knowledge of contributions received by another. The term 'wilful,' as used in these counts, is merely an adoption of the word employed in section 252 to differentiate in the penalties between a purposed and intentional violation of the act and one occurring thoughtlessly or accidentally through inadvertence or mistake." (C. 4.) (Italics ours.)

As the indictment in every count charged merely that the contributions were made by one E. C. Jameson *for* the committee without alleging to whom they were paid, or that they were ever accepted by the committee, or accounted for to the treasurer, or that the treasurer had knowledge thereof, the indictment was held fatally defective to charge an offense under the statute.

The facts shown by the Certificate are:

"Appellee Ada L. Burroughs, as treasurer of a political committee, known as the headquarters committee anti-Smith Democrats, is charged in

the indictment returned October 16, 1931, by a grand jury of the District of Columbia, under the Federal Corrupt Practices Act of February 28, 1925 (U. S. C., Title 2, Chap. 8), with failure to file with the Clerk of the House of Representatives of the United States written reports of contributions alleged to have been made by one E. C. Jameson for said political committee. Appellee James Cannon, Jr., is charged, in each count, with aiding and abetting appellee Burroughs in failing to file such reports. It is charged that the money was contributed for the purpose of influencing and attempting to influence the election of presidential and vice-presidential electors in two states.

"The indictment contains ten counts. The 1st, 3rd, 5th and 7th counts charge the appellees with feloniously failing to file the reports on the different dates specified in the statute. (C. 1.)

"The 2nd, 4th, 6th and 8th counts charge the appellees with unlawfully failing to file reports on the respective dates specified in the statute. (C. 1.)

"The 9th count charges the appellees with conspiring to commit the substantive alleged felonies charged in the preceding 1st, 3rd, 5th and 7th counts by failing to file the reports on the dates specified, while the 10th count charges a conspiracy to commit the substantive misdemeanors charged in the preceding 2nd, 4th, 6th and 8th counts by failing to file reports on the dates specified." (C. 1.)

The first count is set forth in full in the Certificate (C. 1-3) and it is declared, "and the remaining counts of the indictment are respectively similar." (C. 3.) Demurrer to the indictment was filed on the grounds that the Federal Corrupt Practices Act of February 28, 1925, upon which the indictment is based, is unconstitutional, and also that the indictment under the

statute properly construed, fails to state an offense (C. 3).

The trial court filed an opinion, set forth in the Certificate (C. 3) in which it held that it was unnecessary to pass upon the constitutional question involved but construed certain sections of the statute, as quoted hereinabove, and entered judgment, February 15, 1932, sustaining the demurrer (C. 3), from which the United States the same day in open court noted an appeal to the Court of Appeals of the District of Columbia. The record was filed in the Court of Appeals on April 11, 1932, more than thirty days after entry of judgment appealed from (C. 4).

Appellees filed in the Court of Appeals a motion to dismiss the appeal for want of jurisdiction, since the opinion of the trial court showed on its face that its judgment was based upon the construction of the statute upon which the indictment was founded, and therefore, the appeal lay only to the Supreme Court of the United States under the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246 (Sec. 682, Title 18, U. S. Code). The motion was denied.

After the case had been briefed and argued on the merits, the Court of Appeals prepared a Certificate, its reasons for doing so being stated in Certificate (C. 4-5).

SUMMARY OF ARGUMENT

The United States having taken its appeal to the Court of Appeals of the District of Columbia instead of to the Supreme Court of the United States, and more than thirty days having expired since the entry

of the judgment, the Certificate should be dismissed. This appeal should have been taken in accordance with the Criminal Appeals Act (Section 682, Title 18, U. S. Code).

The Supreme Court of the District of Columbia is a district court of the United States within the meaning of the said criminal appeals act of March 2, 1907, allowing the United States a direct appeal to this Court in certain classes of criminal cases. The Court of Appeals of the District of Columbia has no appellate jurisdiction of a judgment sustaining a demurrer based upon the construction of the statute upon which the indictment is founded when the statute is a penal law having general application throughout the United States, as distinguished from a purely local law applicable only to the District of Columbia.

ARGUMENT

The Criminal Appeals Act Applies to Cases in the District of Columbia That Arise Under Penal Statutes Having General Application Throughout the United States

Counsel for the United States, in their brief, concede that the Supreme Court of the District of Columbia is a district court of the United States. The opinion of the justice of the Supreme Court of the District of Columbia, sustaining the demurrer, and also the certified questions before this Court, show that the decision of the trial court turned upon the construction of the statute upon which the indictment was founded. In such circumstances, under the law as settled by this Court in *United States* v. *Stevenson,* 215 U. S. 190,

construing the Criminal Appeals Act of March 2, 1907, the appeal of the United States lay only to this Court, unless by construction urged by the United States herein, the Supreme Court of the District of Columbia is excluded from the operation of the Criminal Appeals Act in criminal cases arising under laws having general application throughout the United States.

The instant case is one of first impression under certain sections of the Corrupt Practices Act of 1925—a law applicable throughout the United States, passed by Congress following the decision of this Court in *Newberry* v. *United States*, 256 U. S. 232. The opinion and judgment of the trial court in the case at bar involved the *construction* of that Act as it relates to the duty of a treasurer of a political committee to file with the Clerk of the House of Representatives reports of indirect contributions, alleged to have been made *for* the committee.

The trial court, in its opinion, construed the act and makes clear the distinction in the act between the responsibility of the treasurer of a political committee to report contributions made directly to the committee and the responsibility of the treasurer to report indirect contributions, *i.e.*, those made *for* the committee where it is not alleged (1) that the committee accepted the contributions, or (2) to whom the contributions were paid or (3) that the contributions were accounted for to the treasurer as provided in Sec. 243 of the act, or (4) that the treasurer had knowledge thereof.

It is our contention that by the Criminal Appeals Act of March 2, 1907, the United States is given the

limited right of direct review by this Court of criminal cases in the Supreme Court of the District of Columbia arising under penal statutes having general application throughout the United Sates *in any one of the three classes enumerated in the criminal appeals act,* but that the Court of Appeals of the District of Columbia has jurisdiction, under Secs. 226 and 935, D. C. Code of 1901, of appeals by the United States in all criminal cases arising under acts of Congress purely local to the District of Columbia. That Court likewise has jurisdiction of all other appeals in criminal cases by the United States or the District of Columbia.

STATUTES APPLICABLE TO JURISDICTION

Direct appeals from District Courts to the Supreme Court of the United States are provided for in Sec. 345, Title 28, U. S. Code (Jud. Code, Sec. 238, as amended):

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections and not otherwise: • • •
>
> "(2) Section 682, of Title 18, where the decision of the district court is adverse to the United States."

Sec. 682, Title 18, provides:

> "WRIT OF ERROR: ON BEHALF OF THE UNITED STATES. A writ of error may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the

United States in all criminal cases, in the following instances, to wit:

"From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded. * * *

"The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases."

The District of Columbia Code of 1929, Title 18, Section 43, relating to the Supreme Court of the District of Columbia, provides:

"The said court shall possess the same powers and exercise the same jurisdiction as the *district courts* of the United States, and shall be deemed a court of the United States." (Italics ours.)

Sec. 225, Title 28, U. S. Code, provides:

"(a) Review of final decisions. The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error final decisions—

"First. In the district courts, *in all cases save where a direct* review of the decision may be had in the Supreme Court under Section 345 of this title." * * * (Italics ours.)

Section 21, Title 1, of the D. C. Code of 1929, makes "all general acts of Congress not locally inapplicable in the District of Columbia" apply therein. *Compare Page* v. *Burnstine,* 102 U. S. 664; *Easterday* v. *Mc-*

Carthy, 256 Fed. 651 (C. C. A. 2nd) (1919); *Roney* v. *United States,* 43 App. D. C. 533.

The Certificate Should Be Dismissed Because the Court of Appeals Has No Jurisdiction of the Appeal

As the opinion of the trial court and the certificate show that the judgment of the trial court was based upon the construction of the statute, the Criminal Appeals Act applies.

United States v. *Keitel,* 211 U. S. 370;
United States v. *Stevenson,* 215 U. S. 190.

The reasoning of the authorities, hereinafter cited, shows that the Supreme Court of the District of Columbia occupies the same relation with respect to direct appeals under the Criminal Appeals Act of 1907 as any other district court of the United States.

Inasmuch as counsel for the United States entertained doubt with respect to the proper appellate court (of which we were advised by one of their briefs filed in the Court of Appeals), the appeal could have been noted to both courts, as was done by the United States in the case of *United States* v. *Sampson,* 19 App. D. C. 419 (1902), in which case the jurisdiction was in this court and the case was decided on the merits in *Infanta Maria Teresa,* 188 U. S. 283. The appeal in the instant case having been misdirected, and since the Transfer Act of September 14, 1922 (42 Stat. 837), was repealed by Sec. 13 of the Act of February 13, 1925 (43 Stat. 936), the Court of Appeals of the District of Columbia was without jurisdiction to certify questions to this Court and the certificate should be

dismissed. Compare *Heald* v. *District of Columbia,* 254 U. S. 20; *Sullivan* v. *Goldman,* 38 App. D. C. 319, *certiorari* denied, 225 U. S. 701.

A complete analogy is found in *Good Shot* v. *United States,* 179 U. S. 87. There an appeal was perfected to the Circuit Court of Appeals when the appellate jurisdiction was vested only in this Court. The Circuit Court of Appeals certified a question regarding its jurisdiction over the case. This court said that as the Circuit Court of Appeals had no jurisdiction the certificate should be dismissed or the question as to jurisdiction answered negatively and it could not even issue a writ of *certiorari* in order to save the appeal that was lost because it was misdirected. There is no longer any Transfer Act, and certification cannot be used to transfer the appeal. Compare *News Syndicate* v. *N. Y. Central Railroad Co.,* 275 U. S. 179. Furthermore, the thirty days allowed for appeal to this Court had expired when the record was filed in the Court of Appeals of the District of Columbia.

The Supreme Court of the District of Columbia Is a District Court of the United States Within the Meaning of the Criminal Appeals Act of March 2, 1907 (34 Stat. at L. 1246)

Title 18, D. C. Code, 1929, contains the following with respect to the Supreme Court of the District of Columbia:

> "Sec. 44. Same; general jurisdiction.—Said court, except as otherwise provided in this title, shall have cognizance of all crimes and offenses

committed within said district and of all cases in law and equity between parties, both or either of which shall be resident or be found within said district and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States in the District.

"Sec. 47. Powers of justices.—The justices of said court, in addition to the powers and jurisdiction possessed and exercised by them as such, under this chapter, shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of the district courts of the United States.

"Sec. 56. Special terms; designation.—The special terms of said court shall be known, respectively, as the circuit court, the equity court, the criminal court, the probate court, and the district court of the United States.

"Sec. 91. Jurisdiction.—The district court shall have and exercise the same powers and jurisdiction as other district courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress, and of all proceedings instituted in exercise of the right of eminent domain."

The Supreme Court of the District of Columbia is a court of the United States. Embry v. Palmer, 107 U. S. 3 (1882).

In Metropolitan R. R. Co. v. Moore, 121 U. S. 558 (1887), and Ormsby v. Webb, 134 U. S. 47 (1890), the history of the organization and the jurisdiction of the courts of the District of Columbia is fully discussed. From the inception of the District of Columbia, the original Circuit Court of the District of Columbia and

its successor, the Supreme Court of the District of Columbia, exercised the same jurisdiction with respect to criminal offenses against the United States as other Federal courts of original jurisdiction.

In the Ormsby case, *supra,* it is said (p. 808).

> "The Act of February 27, 1801, concerning the District of Columbia (2 Stat. 103), created the Circuit Court of the District, with all the powers in such court and the judges thereof that were vested by law in the circuit courts and judges of the circuit courts of the United States, and with jurisdiction of all crimes and offenses committed in the District, and of all cases in law and equity between parties, both or either of which shall be residents thereof."

In Benson v. Henkel, 198 U. S. 1 (1905), it was held that the District of Columbia is a district of the United States within the meaning of U. S. R. S. 1014, authorizing the removal for trial of a person charged with an offense against the United States to the Federal district where the trial is to be held, although the section (R. S. 1014) was taken from the Judiciary Act of 1789, when the District of Columbia was not in existence, and the Supreme Court of the District of Columbia was not in existence. The Supreme Court of the District of Columbia was held to be a court of the United States within the meaning of R. S. 1014.

Page v. Burnstine, 102 U. S. 664 (1880), held that the provisions of the Revised Statutes of the United States, that no party to an action by or against a personal represenative can testify against his adversary as to any transaction with or statement by the deceased, unless called to testify thereto by the opposite party or by the court, applies to the courts of the Dis-

trict of Columbia, as fully as to the Circuit and District Courts of the United States.

In United States to the use of Hine v. Morse, 218 U. S. 493 (1910), the court said:

> "The supreme court of the District is one of general jurisdiction. It possesses all of the powers which by statute are conferred upon the circuit and district courts of the United States. D. C. Rev. Stat., Secs. 760 and 765."

In Federal Trade Commission v. Klesner, 274 U. S. 145, 158 (1927), with respect to the courts of the District of Columbia, this Court said:

> "We think we may use the same liberality of construction in this case. We find here a court which by acts of Congress is to be treated as a district court of the United States, and we find here a court of appeals which by the terms of its creation is exercising reviewing power over all Federal cases proceeding from that district court of the United States by appeal or writ of error so that it is exercising exactly the same function as the circuit court of appeals does with respect to the district courts within their respective territorial jurisdictions in the other parts of the United States. The services of this district court of the United States in the District of Columbia are to be availed of under the Trade Commission Act when necessary in compelling evidence by the express words of the act. We must conclude that Congress in making its provision for the use of the circuit courts of appeal in reviewing the commission's orders intended to include within that description the court of appeals of the District of Columbia as the appellate tribunal to be charged with the same duty in the District. The law was to be enforced and presumably with the same

effectiveness in the District of Columbia as elsewhere in the United States. * * *

In Swift & Company v. United States, 276 U. S. 311, 324 (1928), it was said:

> "First. At the time the questions were certified, there was a contention that the Supreme Court of the District lacked jurisdiction of the subject matter, because it is not a district court of the United States within the meaning of the Anti-Trust Act. * * * We are of opinion that this suit under Sec. 4 of the Anti-Trust Act, which could only have been brought in a court of equity, was properly brought in the Supreme Court of the District, sitting in equity. This conclusion has support in established practice in analogous cases."

In United States v. California Co-Operative Canneries, 279 U. S. 553, 558 (1929), it was said:

> "For the enforcement of the Anti-trust Act within the District of Columbia, its supreme court has jurisdiction corresponding to that which is exercised by the federal district courts in the several districts; and the appellate jurisdiction of the court of appeals of the District corresponds to that of the several circuit courts of appeals."

See also Claiborne-Annapolis Ferry Company v. United States, 285 U. S. 385 (1932).

Decisions of the Court of Appeals of the District of Columbia Regarding the Jurisdiction Exercised by the Supreme Court of the District of Columbia

In United States v. Sampson, 19 App. Cas. D. C. 419 (1902) the Court of Appeals of the District construed Section 7 of the act of February 7, 1893 (27 Stat. 434;

Sec. 226, D. C. Code 1901, Sec. 26, T. 18, D. C. Code 1929, as to appeals to the Court of Appeals of the D. C. from the Supreme Court of the District of Columbia), and Section 762, R. S. D. C. (authorizing any justice of the Supreme Court of the District to hold a special term with the same powers and jurisdiction possessed and exercised by district courts of the United States), and Sections 695 and 698, R. S. U. S. (providing a direct appeal to the Supreme Court of the United States in prize cases) and held that the appellate jurisdiction of the Supreme Court of the United States to be exclusive.

In that case, the United States noted two appeals, one to the Court of Appeals and the other to the Supreme Court of the United States.

In discussing the jurisdictional question, the Court of Appeals, per Chief Justice Alvey, said in the Sampson case, *supra* (pp. 431):

> "If, therefore, the justice holding the special term of the Supreme Court of the District, as a district court, with the *same powers and jurisdiction possessed and exercised by other district courts of the United States,* it would seem to be too clear for any question to be made, that the special term so held for the exercise of the jurisdiction designated, must be regarded and treated as a prize court in the same sense, and to the like extent, of the other district courts of the United States. • • •

(P. 439.) "Upon full consideration, I am of opinion, for the reasons stated, that this appeal

has been improvidently and without legal warrant taken to this court, and it must, therefore, be *dismissed.*

"But, with a view of preserving the appeal taken to this court, in the event that the Supreme Court should decide that such appeal was rightfully taken to this court, and not to the Supreme Court direct, I think it would be proper to withhold the order dismissing the appeal until the question can be passed upon by the Supreme Court, on an appeal from the District Court, unless it be desired by the appellant to take an appeal to the Supreme Court from the order dismissing this appeal—in which case the order of dismissal will be entered at once."

This Court decided the case on its merits in Infanta Maria Teresa, 188 U. S. 283.

In Moss v. U. S., 23 App. D. C. 475 (1904), the appellant was adjudged guilty of contempt for remarks he made to a jury while the latter were in the custody of a deputy marshal, and he was sentenced to fine *and* imprisonment. The Court held that R. S. U. S., Sec. 725, limiting punishment for contempt of courts of the United States to fine *or* imprisonment applied to the Supreme Court of the District of Columbia. The Court of Appeals said (page 484):

"In addition to the foregoing consideration and authority for maintaining that the Supreme Court of this District is a court of the United States, Congress, in adopting the code of laws for the District, by Sec. 61 thereof, has declared that the Supreme Court of the District 'shall possess the same powers and exercise the same jurisdiction as

the circuit and district courts of the United States, and shall be deemed a court of the United States'; and by Sec. 1 of the Code it is declared that 'all the general acts of Congress not locally inapplicable in the District of Columbia * * * shall remain in force' in this District. These, however, are nothing more than general legislative declarations in affirmance of pre-existing decisions upon the subject. It has been held that Sec. 15 of the judiciary act of 1789, now embodied in Sec. 724 of the Revised Statutes of the United States, U. S. Comp. Stat., 1901, p. 583, relating to the power to compel the production of books and writings in actions at law, was in force and applied in actions brought in the courts of this District. Maye v. Carberry, 2 Cranch C. C. 336, Fed. Cas. No. 9,339; Bank of U. S. v. Kurtz, 2 Cranch C. C. 342, Fed. Cas. No. 920; Thompson v. Seldon, 20 How. 194, 15 L. Ed. 1001. And so in regard to Sec. 32 of the judiciary act of 1789, relating to amendments of pleadings, it has been held that that section was in force and applied in the courts of this District. Garland v. Davis, 4 How. 131, 11 L. Ed. 907. And more recently, it has been held by the Supreme Court that the general act of Congress, relating to the competency of parties as witnesses, applied in the Courts of this District as it did in all the other courts of the United States. Page v. Burnstine, 120 U. S. 664, 26 L. Ed. 268."

In U. S. v. B. & O. R. R. Co., 26 App. D. C. 581 (1906), it was held that the Supreme Court of the District of Columbia had jurisdiction of a suit brought by the United States under the Safety Appliance Act of March 2, 1893, to recover a penalty where it provided that such suit should be brought in the District Court of the United States having jurisdiction, the court declaring that the special court of the Supreme Court

of the District of Columbia known as the Circuit Court had jurisdiction.

In Hyattsville Building Association v. Bouic, 44 App. D. C. 408 (1916), the Court held that the Supreme Court of the District of Columbia is a court of the United States within the meaning of Section 265 of the Judicial Code providing that no court of the United States shall grant any writ of injunction to stay proceedings in a state court, except in bankruptcy matters.

Arnstein v. U. S., 54 App. D. C. 199, 296 Fed. 946 (1924), held that the Supreme Court of the District of Columbia is a district court of the United States within Sec. 340 of the Penal Code providing that the offense of conspiracy to commit an offense against the United States denounced by Section 37, shall be cognizable in the District Courts of the United States.

In re McFarland, 30 App. D. C. 365 (1908), appeal dismissed on motion of appellant, 215 U. S. 614, involved the right of the Court of Appeals of the District to grant a writ of prohibition and the Court held that the Supreme Court of the District is one of the inferior courts of the United States under Section 1, Article 3 of the Constitution and possessed the same power and jurisdiction as the circuit and district courts of the United States.

In Pitts v. Peak, 60 App. D. C. 195, 50 Fed. (2d) 487 (1931) (cited approvingly in Claiborne-Annapolis Ferry Co. v. United States, 285 U. S. 382, 391), the petitioner was convicted in the Supreme Court of the District under an indictment charging conspiracy

under Section 37 of the Federal Criminal Code (U. S. C., Title 18, Sec. 88). Section 340, Criminal Code, (U. S. C., Title 18, Sec. 546), makes such offenses triable in the district court of the United States. After conviction, petitioner sought release upon *habeas corpus* on the ground that the Supreme Court of the District was not a district court of the United States. The Court of Appeals said:

> "We think a reasonable and correct view of the subject would indicate that, in the creation and organization of the superior courts of the District of Columbia, Congress has availed of its dual constitutional right in the first place to establish courts of law and invest them, as it has, with power and jurisdiction over all cases and controversies which, under the authority of article 3, it has invested the district courts of the United States, and, in the second place, in the exercise of the power of a sovereign state, under the provisions of section 8 of article 1, has further imposed upon them jurisdiction and power which it cannot impose upon other like courts functioning outside the district. • • •
>
> "We therefore reach the conclusion that the Supreme Court of the District of Columbia, by that name, is a proper tribunal, under the acts of Congress, for the trial of offenses which outside the District would be triable in a District Court, and that therefore the denial of the *habeas corpus* and the dismissal of the writ was in all respects correct and should be and is affirmed." ·

In United States v. Denison, 60 App. Cas. 71, 47 Fed. (2d) 433, 435 (1931), the exact questions whether the Supreme Court of the District of Columbia is a District Court of the United States within the meaning of the criminal Appeals Act of March 2, 1907, and whether

that Act was applicable in this District were involved. The defendant was indicted for possessing intoxicating liquor in violaton of the National Prohibition Act. From a judgment sustaining defendant's demurrer to the indictment, the United States appealed to the Court of Appeals. The defendant, Denison, moved to dismiss the appeal on the ground that the judgment of the trial court was based on the construction of the statute upon which the indictment was founded, and that, therefore, the appeal should have been taken by the United States to the Supreme Court of the United States.

In the opinion, the Court says that the demurrer assailed the indictment on the ground that "it was insufficient in substance, too vague, indefinite and uncertain, to fairly or sufficiently inform the defendant of the charge he is expected to meet at the trial" and other grounds affecting the indictment only as a pleading.

In denying the motion to dismiss, the Court of Appeals said with reference to the Criminal Appeals Act:

> "It is urged that an interpretation of the statute in question is here involved which can only be reviewed by the Supreme Court of the United States under section 682, title 18, U. S. Code (18 U. S. C. A. Sec. 682), which provides: 'A writ of error may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to-wit: From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.'
>
> "This relates to procedure by writ of error from

a District Court of the United States to the Supreme Court. It is settled beyond question that the Supreme Court of the District of Columbia in a proceeding of this sort exercises the jurisdiction of a District Court of the United States, and as such would come within the provisions of the Criminal Code here in question. Arnstein v. United States, 54 App. D. C. 199, 296 F. 946; Federal Trade Commission v. Klesner, 274 U. S. 145, 47 S. Ct. 557, 71 L. Ed. 972; Swift & Co. v. United States, 276 U. S. 311, 48 S. Ct. 311, 72 L. Ed. 587.

"This right to proceed by error to the Supreme Court, however, only lies where the validity or construction of the statute is involved. No such question here arises, since we are dealing solely with the sufficiency of the indictment to charge a crime under the statute. Besides, the validity and construction of this statute has been so often upheld by the courts as to wholly deprive a defendant of the right to proceed on either of the grounds provided. Where the construction of a statute and its validity have been adjudicated, the right to proceed by writ of error from a District Court to the Supreme Court on either of these grounds will no longer be recognized."

The Court of Appeals of the District of Columbia Is a Circuit Court of Appeals

Counsel for the United States in their brief (p. 9) contend that the Criminal Appeals Act has no application to the Supreme Court of the District of Columbia because the Act does not "in terms apply to the Supreme Court of the District of Columbia."

In Federal Trade Commission v. Klesner, 274 U. S. 145, 155, the facts were that the Commission entered an order against the respondent who was engaged in com-

merce within the District of Columbia requiring him to cease and desist from unfair methods of competition therein. Klesner refused to obey the order, and the Commission applied to the Court of Appeals of the District of Columbia for a decree of enfarcement. That court, without considering the merits of the case, held that it was without jurisdiction and dismissed the petition. The Federal Trade Commission Act, Sec. 5, provides, "The jurisdiction of the Circuit Courts of Appeals of the United States to enforce, set aside, or modify orders of the Commission shall be exclusive." On *certiorari*, in reversing, this court upheld the jurisdiction of the Court of Appeals of the District of Columbia, although that court by its exact title is not named in the statute.

Nevertheless, in interpreting the legislative intent of Congress, this Court held that the statute means that the Court of Appeals of the District of Columbia has the same jurisdiction to enforce orders of the Federal Trade Commission relating to matters within the District of Columbia that is conferred by the Federal Trade Commission Act on the United States Circuit Courts of Appeals.

This court said (p. 156):

> "The parallelism between the Supreme Court of the District and the Court of Appeals of the District, on the one hand, and the District Courts of the United States and the circuit courts of appeals, on the other, in the consideration and disposition of cases involving what among the states would be regarded as within federal jurisdiction, is complete."

In Swift & Company v. United States, 276 U. S. 311,

this Court held that the Court of Appeals of the District of Columbia comes within the meaning of the former Transfer Act of September 14, 1922, which provided that, "If any appeal or writ of error has been or shall be taken to, or issued out of, *any Circuit Court of Appeals* in a case wherein such appeal or writ of error should have been taken to or issued out of the Supreme Court" that it should be transferred, saying:

> "We think, however, that it was a Circuit Court of Appeals within the meaning of the Transfer Act and as the judgment appealed from was entered before the effective date of Fbruary 13, 1925, the appeals should have been transferred to this court."

In United States v. California Co-Operative Canneries, 279 U. S. 557, 558, 73 L. Ed. 838, 842 (1929), this Court says:

> "For the enforcement of the Anti-trust Act within the District of Columbia, its supreme court has jurisdiction corresponding to that which is exercised by the federal district courts in the several districts; and the appellate jurisdiction of the court of appeals of the District corresponds to that of the several circuit courts of appeals. * * * The purpose of Congress to expedite such suits would obviously be defeated if in the District of Columbia an appeal lay to the court of appeals from a denial of a motion for leave to intervene."

See also:

Claiborne-Annapolis Ferry Co. v. United States, 285 U. S. 382, 391, 76 L. Ed. 814 (1932).

Pitts v. Peak, 60 App. Cas. D. C. 195, 50 Fed. (2) 485.

Compare: United States v. Denison, 60 App Cas. D. C. 71 (1931), 47 Fed. (2) 433, 435.

Statutes Applicable to the District of Columbia

Counsel for the United States contend that this Court should decide that the Supreme Court of the District of Columbia is excepted from the provisions of the Criminal Appeals Act, a general law of the United States, by reason of Secs. 935 and 226, D. C. Code (1901).

The Court of Appeals of the District of Columbia was created by the Act of February 9, 1893 (27 Stat. 434). The appellate jurisdiction of that Court is contained in Sec. 226 of the D. C. Code (Sec. 26, Title 18, D. C. Code, 1929), which provides:

> "Sec. 226. JURISDICTION—Any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. *Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof,* whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said

court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal." (Italics ours.)

Section 226, *supra*, provides for appeals from final judgments, and also authorizes the Court of Appeals of the District to allow special appeals from interlocutory orders. In Ainsworth v. United States, 1 App. Cas. D. C. 518 (1893), the Court of Appeals allowed a special appeal to Ainsworth, defendant in a criminal case, whose demurrer to an indictment had been overruled by the Supreme Court of the District of Columbia. The Court of Appeals reversed the order, and thereafter a second indictment was found by the grand jury against Ainsworth. The trial court sustained defendant's demurrer to the second indictment. Thereupon, the United States noted and perfected a general appeal to the Court of Appeals from the order sustaining defendant's demurrer. On motion of the defendant, the Court of Appeals, on the authority of United States v. Sanges, 144 U. S. 310, dismissed the appeal of the United States, holding that the general language in Sec. 226 of the Code, D. C., did not expressly authorize an appeal by the United States in a criminal case. United States v. Ainsworth, 3 App. Cas. D. C. 483 (1894).

This situation obtained in the District of Columbia until 1901, when Congress enacted Sec. 935 of the Code (Sec. 355, Title 6, D. C. Code, 1929), which provides:

"Sec. 935. APPEALS BY UNITED STATES AND DISTRICT OF COLUMBIA.—In all criminal prosecutions, the United States or the District of Columbia, as the case may be, shall have

> the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided,* That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside."

This section undertook to allow to the United States or the District of Columbia the same right of appeal to which a defendant is entitled. In United States v. Evans, 28 App. D. C. 264 (1906), the trial court sustained a demurrer to an indictment charging murder, because of the insufficiency of the indictment as a pleading. The judgment sustaining the demurrer was reversed, and the defendant was tried, acquitted and discharged. Thereupon, the United States took a general appeal, claiming the right to do so under Sec. 935 of the D. C. Code, from the ruling of the trial court in excluding an alleged confession of the defendant, but the Court of Appeals held that, notwithstanding the language of Sec. 935, D. C. Code, an appeal by the United States would not lie from a judgment discharging the accused after a verdict of not guilty based upon exceptions taken during the trial. United States v. Evans, 30 App. Cas. D. C. 58 (1907). On *certiorari,* this Court sustained the ruling. United States v. Evans, 213 U. S. 297 (1909).

In view of the foregoing decisions, that part of Sec. 935 of the Code, D. C., reading as follows:

> "Provided that if on such appeal it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside,"

became ineffective, and all that remains of the statute (Sec. 935) reads as follows:

> "In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant."

On July 3, 1926, Congress passed an act (44 Stat. 831, Title 18, Sec. 27, Code D. C., 1930), providing:

> "That nothing contained in any Act of Congress shall be construed to empower the Court of Appeals of the District of Columbia to allow an appeal from any interlocutory order entered in any criminal action or proceeding or to entertain any such appeal."

Inasmuch as a defendant since 1926 has no right to a special appeal to the Court of Appeals from an interlocutory order of any nature in a criminal case, the United States has no such right under Sections 935 and 226.

On March 2, 1907, Congress enacted the Criminal Appeals Act (34 Stat. 1246, U. S. C. Title 18, Sec. 682), a general law, allowing the United States the right of direct appeal limited in its nature from a decision of a district court in criminal cases in three specified instances. The Act is as follows:

> "That a writ of error may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> "From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.

"From a decision arresting a judgment of conviction for insufficiency of the indictment, where such decision is based upon the invalidity or construction of the statute upon which the indictment is founded.

"From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

"The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases.

"Pending the prosecution and determination of the writ of error in the foregoing instances, the defendant shall be admitted to bail on his own recognizance: *Provided,* That no writ of error shall be taken by or allowed the United States in any case where there has been a verdict in favor of the defendant."

[The words "circuit courts" are omitted in the text in the U. S. Code since the Act of Congress abolished circuit courts.] Judicial Code, 36 Stat. 1167.

In direct appeals brought under the Criminal Appeals Act where demurrers to indictments have been sustained, this Court has held that it confers jurisdiction upon this Court to pass only upon the question of the construction of the statute upon which the indictment is founded. United States v. Keitel, 211 U. S. 230; United States v. Stevenson, 215 U. S. 200.

No jurisdiction is conferred to pass upon the sufficiency of the indictment under the general principles of criminal pleading. United States v. Keitel, 211 U. S. 230; United States v. Biggs, 211 U. S. 507.

Where a demurrer to an indictment is sustained upon the ground that it is bad in law without opinion, it is necessary for the parties to request a specification of the grounds upon which the decision was made, as this Court will not undertake from the record to determine upon what grounds it was based. United States v. Carter, 231 U. S. 492.

Where the opinion is ambiguous, this Court will determine for itself whether its decision was based upon a construction of the statute upon which the indictment was founded. United States v. Carter, *supra;* United States v. Colgate & Co., 250 U. S. 300.

Where the effect of the decision was to hold that the act charged did not fall within the condemnation of the statute, the trial court necessarily construed the statute and the case is correctly here. United States v. Birdsall, 233 U. S. 223; United States v. Patten, 226 U. S. 525.

Where both the construction of the statute and the sufficiency of the indictment as a pleading are involved, this Court will pass upon only construction of the statute. United States v. Stevenson, 215 U. S. 190; United States v. Patten, 226 U. S. 525.

Construing the Criminal Appeals Act of 1907, a later act applicable to all district courts of the United States, in connection with Sections 226 and 935, D. C. Code, to give effect to the purpose of Congress, the result is that the United States is allowed the limited right of direct review by this Court of criminal cases arising in the District of Columbia in any of the three classes of cases enumerated in the Criminal Appeals Act where the prosecution is under Acts of Congress having general application throughout the United

States as distinguished from purely local laws of the District of Columbia while Sections 226 and 935 of the D. C. Code provide for appeals in all other such criminal cases arising in the district.

The defendant in a criminal case in the District of Columbia has a right to an appeal to the Court of Appeals from a final judgment against him. The United States also has the right to appeal to that court from a final judgment in favor of a defendant in a criminal case where demurrers are sustained based upon the alleged insufficiency of the indictment as a pleading (*United States* v. *Denison,* 60 App. D. C. 71, 47 Fed. (2) 433 (1931) and where a plea in abatement to indictment has been sustained. *United States* v. *Halstead,* 38 App. Cas. D. C. 69 (1912); *United States* v. *Griffith,* 55 App. Cas. D. C. 123, 2 Fed. (2d) 925 (1924); *United States* v. *Fall,* 56 App. Cas. D. C. 83 (1925), 10 Fed. (2d) 648; *United States* v. *Doheny,* 56 App. Cas. D. C. 86 (1925), 10 Fed. (2d) 651.

This leaves unimpaired the exercise of appellate jurisdiction by the Court of Appeals of the District of Columbia, under Sections 226 and 935 of Code, D. C., in cases involving the construction or validity of Acts of Congress purely local to the District of Columbia, as in *United States* v. *Cella,* 37 App. 423 (1912), *certiorari* denied, 223 U. S. 728, in conformity to the principle announced in *American Security and Trust Co.* v. *District of Columbia,* 224 U. S. 491 (1912); *United Surety Co.* v. *American Fruit Growers Product Co.,* 238 U. S. 140 (1915), and *McGowan* v. *Parish,* 228 U. S. 312 (1913), and the right of the United States to appeal from the police court to the Court of Appeals, as well as the right of the District of Columbia to

appeal from the police court and from the juvenile court to the Court of Appeals.

The purpose of the Criminal Appeals Act of March 2, 1907, was to provide for and promote the expeditious settlement of questions involving statutory construction or constitutionality of general acts of Congress. This was pointed out by this Court in the case of *United States* v. *Stephenson,* 215 U. S. 190, and *United States* v. *Bitty,* 208 U. S. 393. It is stated in Hughes' Federal Practice, Jurisdiction and Procedure, Vol. V, Secs. 3091 and 3092:

> "The reason for allowing the United States a direct appeal in criminal cases coming within the Criminal Appeals Act is given by Chief Justice Taft as follows:
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> " 'The reason for this exception is doubtless in the need for expedition in securing a final construction of new criminal statutes by the court of last resort, so that the government and those charged with violating the new law may have the earliest possible final interpretation of what the new law means, and long trials and convictions which might subsequently be set aside because of a faulty interpretation of the statute, may be avoided. Expedition and uniformity in construction are thus the controlling considerations.'
>
> "See the jurisdiction of the Supreme Court under Act of February 13, 1925, by Wm. Howard Taft, 35 Yale Law Journal 1 (6)."

Cases Cited by the Government Distinguished

The cases cited by counsel for the United States in which it is asserted that the Court of Appeals of the

District of Columbia has since 1907 entertained jurisdiction of appeals coming within the terms of the Criminal Appeals Act of March 2, 1907, are:

United States v. *Evans,* 30 App. D. C. 58, decided June 4, 1907. This was an appeal by the United States under Sec. 935, D. C. Code, from a judgment in the Supreme Court of the District of Columbia discharging the accused in a homicide case after a verdict of acquittal. This case is no authority against the contention that the Criminal Appeals Act applies to the District of Columbia for the following reasons:

1. The transcript of the record in the Evans case shows that the verdict of acquittal and judgment were entered in the Supreme Court of the District of Columbia on February 1, 1907, and that the United States on the same day in open court noted an appeal to the Court of Appeals of the District of Columbia. Under the practice in the District as settled by the Court of Appeals, the notation of the appeal was the perfection of it (*District of Columbia* v. *Roth,* 18 App. D. C. 547) (1901), inasmuch as neither the District of Columbia nor the United States is required by law to file an appeal bond. The jurisdiction of the appeal, therefore, could not have been affected by the Criminal Appeals Act, which was not enacted until March 2, 1907.

2. The appeal being from a judgment of acquittal, the United States could not have appealed under Sec. 935, Code D. C. (*United States* v. *Evans,* 213 U. S. 297, *certiorari* quashed, s. c., 30 App. Cas. 58) nor under the Criminal Appeals Act for the reason that it provides:

"That no writ of error shall be taken by or allowed the United States of any case where there has been a verdict in favor of the defendant."

3. This Court held in *United States* v. *Sanges,* 144 U. S. 310 (1892), that the United States had no right of appeals in a criminal case after a verdict of acquittal. The Sanges case controlled the decision of the Court of Appeals of the District in the *United States* v. *Ainsworth,* 3 App. Cas. D. C. 483 (1894).

4. While the Court of Appeals in its opinion in the Evans case (30 App. 58) mentioned the Criminal Appeals Act of March 2, 1907, its application to the District of Columbia was not urged nor was that question decided.

In discussing the case of *Evans* v. *United States,* 30 App. D. C. 58, counsel for the United States in their brief (p. 23) state that in that case the Court of Appeals "permitted an appeal to it by the United States in at least one of the classes of cases covered by the Criminal Appeals Act, *i.e.,* where the court of first instance sustains a special plea in bar and the defendant has not been put in jeopardy." This is an error. No such question was involved in the Evans case. An examination of the transcript of the record shows that the plea of the defendant was not quilty to an indictment for murder. No special plea in bar was filed. Compare *United States* v. *Storrs,* 272 U. S. 652. In the Evans case, the trial court excluded a certain alleged confession of the defendant at the trial, to which ruling the United States excepted, and the jury returned a verdict of not guilty on February 1, 1907, a month prior to the passage of the Criminal Appeals Act, and on February 1, 1907, the United

States noted an appeal to the Court of Appeals, under Sec. 935 of the D. C. Code. The appeal was dismissed by the appellate court, because the United States could not maintain an appeal when a defendant has been acquitted. The opinion of the Court of Appeals was rendered June 4, 1907, in which the Court recites the existence of the Criminal Appeals Act and merely refers to the fact that the United States has the right of appeal thereunder when a special plea in bar of the defendant is sustained. No such question was involved in that case and no decision was made in reference thereto.

United States v. *Cella*, 37 App. D. C. 424 and 433, (1911), appeals by the United States in two cases, from the judgment of the Supreme Court of the District of Columbia sustaining demurrers to an indictment for criminal conspiracy to violate a purely *local statute* exclusively applicable to the District of Columbia entitled, "An Act to prohibit bucketing and bucket shopping and to abolish bucket shops," approved March 1, 1909. (Code D. C. Title 6, Sec. 158, *et seq.*) Demurrers were interposed attacking the constitutionality of the act and the sufficiency of the indictment as a pleading, which demurrers were sustained and judgment entered ordering the defendant to go hence without day. The Government noted an appeal to the Court of Appeals of the District of Columbia under Sec. 935 of the D. C. Code. A motion to dismiss for want of jurisdiction was filed on two grounds, as shown by the transcript of the record in the Court of Appeals, namely (1) whether the p[illegible]ase "right of appeal" as used in Sec. 935, Code, D. C., was enough to confer definite appellate jurisdiction, and

(2) whether Sec. 935, as construed by this court in *United States* v. *Evans,* 30 App. D. C. 58, and 213 U. S. 297, allowed the United States to apply only when defendant had not been put in jeopardy. The opinion of the Court of Appeals shows that it did not discuss nor decide the effect of the Criminal Appeals Act of 1907 upon the right of the Government to appeal to this court. Petition for *certiorari* was denied, 223 U. S. 728. The petition for *certiorari* and brief in this court, Nos. 891 and 892, October term, 1911, have been examined, and it appears therefrom that no contention was made before this court with respect to the application of the Criminal Appeals Act of March 2, 1907, to the Supreme Court of the District of Columbia.

The Cella case is not in opposition to the contention advanced herein in view of the fact that it involved a prosecution under an act of Congress applicable exclusively to the District of Columbia, and is, therefore, controlled by the principles of law announced by this court in *American Security and Trust Co.* v. *Commissioners of the District of Columbia,* 224 U. S. 491; *McGowan* v. *Parish,* 228 U. S. 310, and *U. S. Surety Company* v. *American Fruit Products Co.,* 238 U. S. 140.

The instant case, on the other hand, involves a prosecution under the Federal Corrupt Practices Act of 1925, a general penal law of the United States.

Answers to Some of the Contentions of the United States

The suggestion of the counsel for the United States is made in their brief (p. 25) that cases might arise in the Police Court or the Juvenile Court of the District

of Columbia involving the violation of statutes having general application in the United States. If so, and if such cases should be decided adversely to the United States in those courts, the United States would not have the right of direct appeal therefrom to this Court under the Criminal Appeals Act for the reason that neither the Police Court nor the Juvenile Court is held to be a district court of the United States.

The intimation made by counsel for the United States that should this Court hold the Criminal Appeals Act applies to the District of Columbia, it would seriously increase the number of appeals to this Court is best refuted by the Government's statement in its brief. After the most diligent and exhaustive research of the record of appeals by the United States to the Court of Appeals which have been taken in the past 26 years, since the Criminal Appeals Act was enacted in 1907, the government has been able to cite this Court only two cases which it is claimed could have been appealed to this Court under the Criminal Appeals Act, and as has been shown, in neither of these cases could the United States have maintained an appeal to this Court.

We submit that the object of the Criminal Appeals Act, in granting to the Government the right of a limited or restrictive review by direct appeal to this Court from a district court of the United States, regardless of the district in which the decision adverse to the United States is made, was to obtain an early decision of this Court definitely settling the question of law for the entire country. It is significant that the Act itself provides that the writ of error (now appeal) shall be taken in thirty days—a clear legislative decla-

ration that Congress intended that there should be no unnecessary delay in expediting the appeal. The Act is obviously silent as to any of the circuit courts of appeals. A final determination of judicial construction for the benefit of the Government, as well as the public is just as important for the District of Columbia, and perhaps more so, as in any other federal district.

If the unusual contention insisted upon by the Government in the instant case prevails, then a statute having application throughout the United States may be construed one way in one federal district, and the same statute may be construed directly opposite thereto by the Court of Appeals of the District of Columbia. The Court of Appeals of the District of Columbia might not agree with the decision of a district court outside of this District, and the decision of the Court of Appeals would not be binding upon a district court outside of the District of Columbia. In the situation thus supposed, the conflict would result in an application to this Court for *certiorari*. The construction of the Criminal Appeals Act contended for by us is consonant with uniformity of federal procedure and is consistent with the purpose of the ordinary meaning of the language of the Act.

The adoption of the contention of counsel for the Government would exclude the District of Columbia from beneficial and remedial legislation in the practice and procedure in relation to the administration of criminal laws. If their contention is correct, then upon a decision by a District Court of the District of Columbia, adverse to the United States, in regard to a general law of the United States, an appeal can be

taken to the Court of Appeals of the District of Columbia, and if the trial court is sustained, the United States could seek a *certiorari* from this Court; and if the trial court is reversed, then the defendant may seek a *certiorari.*

The prosecuting officer frequently claims that a defendant seeks unnecessary delay in the final disposition of a case, but the effect of the Government's position in this case, in urging a strained construction of the Criminal Appeals Act is to cause unnecessary and prolonged delay in the final disposition of a criminal case arising under a law having general application throughout the United States, especially the Corrupt Practices Act, the construction of which is involved in the instant case. This Court will take judicial notice of the fact that after elaborate and expensive hearings by a Committee of the Senate of the United States with reference to regulating the expenditure of money in the election of presidential and vice-presidential electors, a proposed new Act was suggested and report of the Committee was made to the last Congress, but no action has been taken thereon. It is well known that doubts have arisen in regard to the vexed question whether Congress has the constitutional power to enact such legislation regulating the choosing of presidential electors.

The indictment was found in the instant case on October 16, 1931, and the trial Court rendered its decision on February 15, 1932. If the United States had exercised its right of direct appeal within thirty days under the Criminal Appeals Act to this Court where jurisdiction is exclusive, the case would have been finally disposed of long prior hereto. By the inad-

vertence of the counsel for the Government in taking an appeal to a wrong court, counsel for the Government, in its effort to save its appeal, is compelled to place a narrow construction on the Criminal Appeals Act, *i.e.*, to exclude from its operative effect one of the most important district courts of the United States.

The suggestion of counsel for the United States in their brief (pp. 25-26) that to permit review by this Court from judgments of the Supreme Court of the District might "add to the burdens of this Court by requiring it to consider statutes which are only of local importance" is inconsistent with their assertion (Government's brief, p. 9) that "there has never been an appeal to this Court from any judgment of the Supreme Court of the District of Columbia under the Criminal Appeals Act since its enactment in 1907." The construction of statutes purely local to the District of Columbia, adverse to the contention of the United States, we submit, does not come within the meaning of the Criminal Appeals Act. In *American Security & Trust Company* v. *Commissioners of D. C.*, 224 U. S. 491 (1912), this Court held that congressional enactments having general application throughout the United States and not purely local laws of the District of Columbia are what is meant by Section 250 of the Judicial Code (36 Stat. 1087) which provided for the appellate review in this Court of judgments of the Court of Appeals, D. C., in which the construction of "any law of the United States" is drawn in question. While Section 250, Judicial Code, has been repealed by Sec. 13 of the Act of February 13, 1925 (43 Stat. 936) we submit as the words, in Section 250 "any

law of the United States" were construed to mean "laws having general application throughout the United States" and the jurisdiction then given to this Court by Section 250 was confined to what naturally and properly belongs to it, that it necessarily follows that the right of review by this Court from a judgment from any district court sustaining a demurrer based upon the "construction of the statute upon which the indictment is founded" means a statute having general application throughout the United States, such as the Corrupt Practices Act involved in the instant case.

In answer to the statement of counsel for the United States in their brief (p. 12) (following the quotation from the opinion of the Court of Appeals of the District of Columbia in *United States* v. *Denison,* 60 App. D. C. 71, 47 Fed. (2d) 433 (1931), holding that the Criminal Appeals Act of 1907 is applicable to the District of Columbia) that "There is no statement of any court which we have been able to find which even suggests that the Criminal Appeals Act has application in cases originating in the Supreme Court, or in any other Court, of the District of Columbia," we submit the following considerations:

(1) The question could not arise in any of the Circuit Courts of Appeal of the United States, excepting the Court of Appeals of the District of Columbia, and (2) the question is raised in this case, the only prior case in point being the Denison case, *supra.*

Counsel for the United States in their brief (pp. 29-30) say that if this Court shall decide that the Criminal Appeals Act applies to the District of Columbia, then all questions reviewable under the Act arising in the Supreme Court of the District of Columbia would be reviewable in this Court, whereas any ques-

tions not covered by the Act would be reviewable in the Court of Appeals of the District. Even so, this is the exact situation in every other federal district of the United States, except that the appeals are taken to the Circuit Court of Appeals for the district.

Counsel for appellees contend that Section 935 of the D. C. Code may be construed in connection with the Criminal Appeals Act of March 2, 1907, so as to give effect to each without in any way disturbing the criminal practice in the courts of the District of Columbia. (Compare *United States* v. *Sampson*, 19 App. Cas. 419 (1912); *Tri-State Motor Corp.* v. *Standard Steel Car Co.*, 51 App. D. C. 109, 276 F. 631.)

Such construction is in harmony with the letter and spirit of the Criminal Appeals Act of March 2, 1907 (a later statute than Section 935 of the D. C. Code), and with the purpose sought to be obtained by the revision of the Judicial Code by the Act of February 13, 1925. It would make the Criminal Appeals Act of uniform application throughout the United States, tend to provide for the more expeditious settlement of questions of law relating to the constitutionality or construction of Acts of Congress and of the other questions of law coming within the limited right of direct review contemplated by the Criminal Appeals Act. The construction urged by counsel for the Government on the contrary, seeks to exempt the District of Columbia from the operation of the Criminal Appeals Act of March 2, 1907, admittedly applicable to appeals from all other district courts despite that both by statute and judicial decision, the Supreme Court of the District of Columbia is a district court of the United States and of the further fact that the District Code (Sec. 21, Title 1, Code, D. C., 1929) makes all

general statutes of the United States not locally inapplicable applicable to the District of Columbia and in face of the fact that both the Criminal Appeals Act of March 2, 1907, and the revision of the Federal Judicial Code by the Act of February 13, 1925, are both later enactments designed to clarify the statute respecting appellate jurisdiction and to expedite the settlement of litigation in Federal courts.

The District of Columbia is the seat of the national government where are located the department heads and bureaus. In this jurisdiction more than any other in the United States new and novel questions involving the constitutionality and construction of Federal statutes are likely to arise. The exception sought to be made of the District of Columbia by counsel for the Government would only tend to defeat the purpose of the Criminal Appeals Act of March 2, 1907, since it would require the Government in criminal cases arising within the District and coming within its terms, to appeal first to the Court of Appeals of the District of Columbia and then if dissatisfied with the decision, to seek a *certiorari* to this court. Such a construction would seriously burden defendants who are entitled to a prompt disposition of prosecutions instituted against them. It would also operate to the great disadvantage of the Government.

Consideration should also be given to the illogical situation which would also result in the District of Columbia under some circumstances if the Government's construction were adopted. Sec. 345, Title 28, U. S. C., provides for a direct appeal by the government in five specified classes of cases, one class being involved in the instant case, coming under the Criminal Appeals Act. The others relate to the Act to

expedite the hearing and determination of certain suits brought by the United States under the Anti-Trust or Interstate Commerce Laws, etc., others to the review of interlocutory and final judgments and decrees in suits to enforce, suspend or set aside orders of the Interstate Commerce Commission or under Sec. 316 of the Packers' and Stockyards Act of 1921, to regulate foreign commerce in live stock, etc.

Some of these acts provide for their enforcement by both civil and criminal procedure. Under them (by Sec. 345, Title 28, U. S. C.) if the appeal is from a judgment or order arising in a civil proceeding, it must go direct to this court. See *United States* v. *Colgate & Co., supra*, and *United States* v. *A. Schrader's Son, Inc.*, 252 U. S. 85. If, however, an indictment is returned in a criminal proceeding under such acts in the District of Columbia and the government's contention in this case is sound, *viz.*, that the Criminal Appeals Act of March 2, 1907, has no application to the District of Columbia, then the Criminal appeal, although involving both constitutionality and construction of the statute upon which the indictment was founded would have to be appealed to the Court of Appeals of the District of Columbia instead of to this court for a final and expeditious determination of the law questions involved. In other words, if constitutionality or construction arose in a civil proceeding under such statutes in the District of Columbia, appeal would be directly to this court, but if the same question arose in a criminal prosecution under such statutes the appeal of the government would lie to the Court of Appeals of the District of Columbia. This clearly illustrates the inconsistent and unsatisfactory situation which grows out of the attempt by counsel for

the government to make the Supreme Court of the District of Columbia an exception to the general rule governing criminal appeals in the district courts of the United States.

It is respectfully submitted that the construction urged by counsel for the government would tend to confusion, result in delay and embarrassment in the administration and enforcement of the law, and instead of promoting symmetry of procedure within the District of Columbia which it claims to be desirable, would tend rather to destroy it.

CONCLUSION

We respectfully submit that the questions certified should be either dismissed or answered in the negative, for the reasons stated hereinabove.

Respectfully submitted,

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March, 1933.

SUPREME COURT OF THE UNITED STATES.

No. 683.—October Term, 1932.

United States of America, vs. Ada L. Burroughs and James Cannon, Jr.	On Certificate from the Court of Appeals of the District of Columbia.

[April 10, 1933.]

Mr. Justice Roberts delivered the opinion of the Court.

The Court of Appeals of the District of Columbia has certified the following questions:

"Question No. 1: Where on a criminal indictment a demurrer is sustained and the indictment quashed on two grounds, one involving a construction of the statute and the other the interpretation of the indictment as a pleading, will an appeal lie at the instance of the United States from the trial court of the District of Columbia to the Court of Appeals of the District of Columbia?

"If Question No. 1 be answered in the affirmative, then

"Question No. 2: May the Court of Appeals of the District of Columbia on such appeal review the ruling of the trial court based on the construction of the statute?"

We are advised by the certificate that the defendants were indicted by a grand jury of the District of Columbia for violation of the Federal Corrupt Practices Act.[1] They interposed a demurrer asserting that the conduct imputed to them did not constitute the offense defined by the Act, and that, in any event, the indictment was insufficient as a pleading in omitting to aver knowledge on the part of the defendants, which was claimed to be an essential element of the crime. From a judgment of the Supreme Court of the District of Columbia sustaining the demurrer and quashing the indictment the Government appealed to the Court of Appeals. The appellees contended that court lacked jurisdiction, since the Criminal Appeals Act[2] governs the right of review in such cases and permits only a direct ap-

[1]Act of February 28, 1925; U. S. C., Tit. 2, Chap. 8.

[2]Act of March 2, 1907; 34 Stat. 1246; U. S. C., Tit. 18, § 682.

peal to this court. The solution of the questions propounded therefore requires that we answer another: Does the Criminal Appeals Act embrace cases triable in the Supreme Court of the District of Columbia?

In the absence of express statutory authority no appeal may be taken on behalf of the United States in any criminal case. *United States* v. *Sanges*, 144 U. S. 310; *United States* v. *Ainsworth*, 3 App. D. C. 483. March 3, 1901, Congress adopted the Code of Law for the District of Columbia,[3] whereby it defined the jurisdiction of the Police Court and the Supreme Court of the District, sanctioned appeals from both to the Court of Appeals, and by section 935 enacted:[4]

"In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided*, That if on such appeal it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside."[5]

The Criminal Appeals Act was not adopted until 1907. It authorized a writ of error (now an appeal) "by and on behalf of the United States from the district or circuit courts direct to" this court "in all criminal cases, in the following instances". Three classes are enumerated: decisions quashing or sustaining a demurrer to an indictment, based upon the invalidity or construction of the statute on which the indictment is founded; decisions arresting judgment for insufficiency of the indictment, based upon such invalidity or construction of the statute; and decisions sustaining a special plea in bar when the defendant has not been put in jeopardy. No appeal is permitted where there has been a verdict in favor of the defendant. The Court of Appeals holding this Act, so far as applicable, superseded Section 935 of the District Code,[6] desires a ruling as to its jurisdiction on appeal where a decision will involve both a construction of the statute on which the

[3]31 Stat. 1189.

[4]31 Stat. 1341. By the Act of March 19, 1906, 34 Stat. 73, a Juvenile Court was established and appeals from its judgments to the Court of Appeals authorized and regulated.

[5]In *United States* v. *Evans*, 28 App. D. C. 264, approved 213 U. S. 297, it was held that the proviso was ineffective to afford the Government a review of alleged errors in the course of a trial resulting in acquittal.

[6]See *United States* v. *Denison*, 47 F. (2d) 433; 60 App. D. C. 71.

indictment is based and a ruling as to the validity of the indictment as a pleading. We think, however, the answer is clear; for we are of opinion that the Criminal Appeals Act is inapplicable to criminal cases tried in the Supreme Court of the District. These are regulated solely by Section 935 of the Code.

It is said that the Criminal Appeals Act is pertinent because the Code provides that the Supreme Court is to be "deemed a court of the United States";[7] (compare *Embry* v. *Palmer*, 107 U. S. 3) but designation of a tribunal as a court of the United States, does not constitute it a district court. *In re Mills*, 135 U. S. 263, 267-8; *Stephens* v. *Cherokee Nation*, 174 U. S. 445.

Appellees further urge the statement in the Code[8] that the Supreme Court "shall possess the same powers and exercise the same jurisdiction as the district courts of the United States" has the effect of making it a district court as that phrase is used in the Criminal Appeals Act. Where a statute uses this or similar language to define the jurisdiction of a court such a court is authorized to try statutory actions declared to be cognizable by district courts, as if the tribunal were in fact a district court of the United States. And the same rule is applicable to appellate proceedings. Compare *In re Cooper*, 143 U. S. 472, 494; *Hine* v. *Morse*, 218 U. S. 493; *Federal Trade Commission* v. *Klesner*, 274 U. S. 145, 154; *United States* v. *California Coöperative Canneries*, 279 U. S. 553, 558. But vesting a court with "the same jurisdiction as is vested in district courts" does not make it a district court of the United States. This has been repeatedly said with reference to territorial courts. *Reynolds* v. *United States*, 98 U. S. 145, 154; *Stephens* v. *Cherokee Nation*, *supra*, p. 476; *Summers* v. *United States*, 231 U. S. 92, 101.

The Criminal Appeals Act in naming the courts from which appeals may be taken to this court employs the phrase "district courts"; not "courts of the United States", or "courts exercising the same jurisdiction as district courts". We need not, however, determine whether the statute should be construed to embrace criminal cases tried in the Supreme Court of the District if Section 935 of the District Code were not in effect. That section deals comprehensively with appeals in criminal cases from all of the courts of first instance of the District and confers on the Court of

[7]Code, District of Columbia, Tit. 18, Sec. 43.

[8]*Ibid.*

Appeals jurisdiction of appeals by the Government seeking review of the judgments of those courts. The Criminal Appeals Act, on the other hand, affects only certain specified classes of decisions in district courts, contains no repealing clause, and no reference to the courts of the District of Columbia or the territorial courts, upon many of which jurisdiction is conferred by language quite similar to that of the Code of Law of the District.[9] We cannot construe it as impliedly repealing the complete appellate system created for the District of Columbia by Section 935 of the Code, in the absence of expression on the part of Congress indicating that purpose. Implied repeals are not favored, and if effect can reasonably be given to both statutes the presumption is that the earlier is intended to remain in force. *Frost* v. *Wenie*, 157 U. S. 46, 58; *United States* v. *Healey*, 160 U. S. 136, 147; *United States* v. *Greathouse*, 166 U. S. 601. 605; *Petri* v. *Creelman Lumber Co.*, 199 U. S. 487, 497; *Ex parte United States*, 226 U. S. 420, 424; *Washington* v. *Miller*, 235 U. S. 422, 428.

The Court of Appeals has jurisdiction of both issues presented by the appeal from the decree of the Supreme Court.

Question No. 1 answered "Yes".
Question No. 2 answered "Yes".

Mr. Justice CARDOZO concurs in the result.

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[9] *Alaska:* "There is established a district court for the Territory of Alaska, with the jurisdiction of district courts of the United States" . . . (U. S. Code, Tit. 48, § 101.)

Hawaii: "There shall be . . . a district court" . . . "The said court shall have the jurisdiction of district courts of the United States" . . . (U. S. Code, Tit. 48, §§ 641, 642.)

Porto Rico: "Porto Rico shall constitute a judicial district to be called 'The district of Porto Rico' . . . Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States" . . . (U. S. Code, Tit. 48, § 863.)

Congress has expressly provided for direct appeal from the District Court of Porto Rico to this court, thus: "The said district court shall be attached to and included in the first circuit of the United States, with the right of appeal and review by said circuit court of appeals in all cases where the same would lie from any district court to a circuit court of appeals of the United States, *and with the right of appeal and review directly by the Supreme Court of the United States in all cases where a direct appeal would be from such district courts.*" (U. S. Code, Tit. 48, § 864.)